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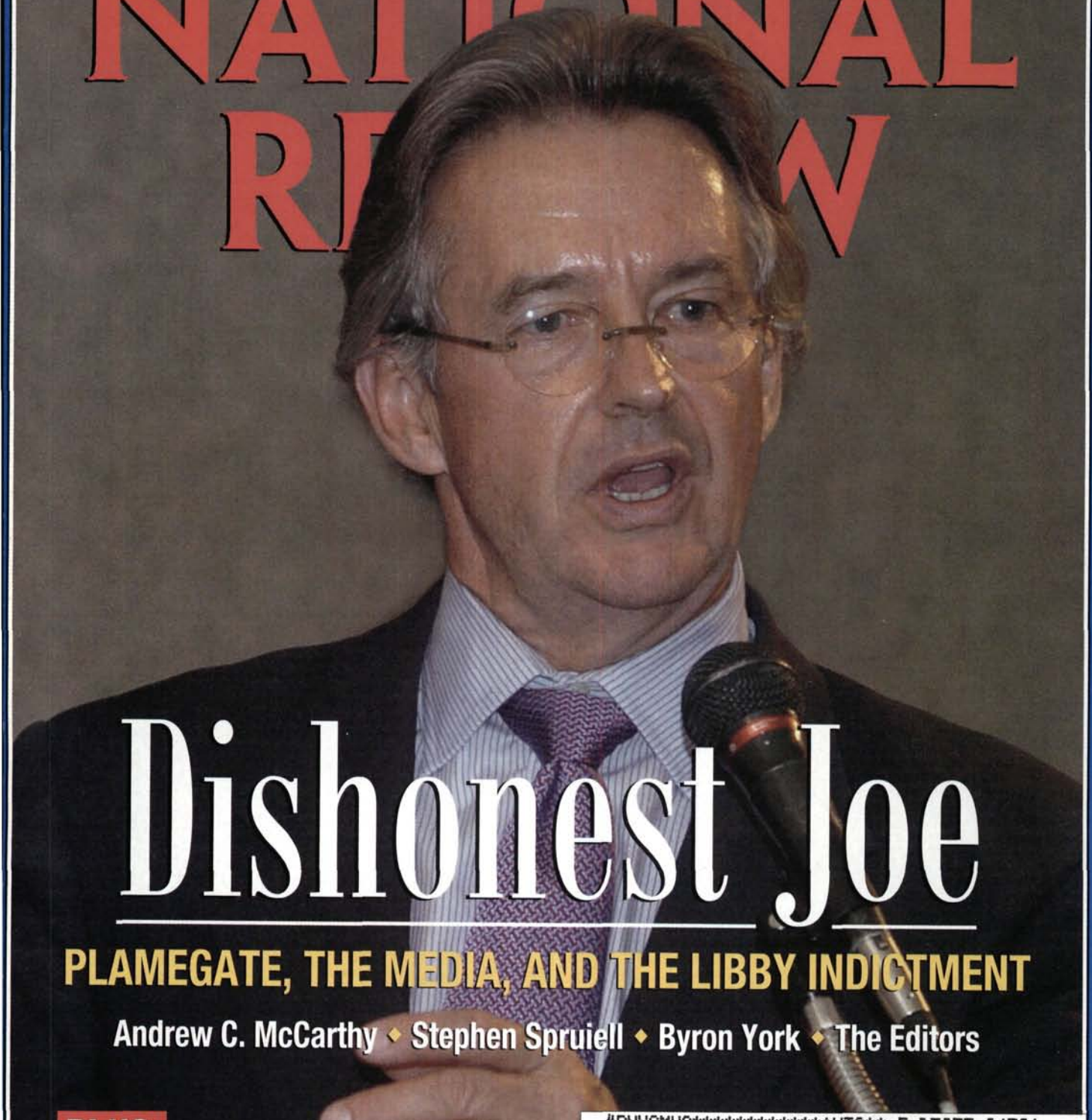
LITO!

DAVID FRUM: How Bush Can Come Back

NATIONAL REVIEW



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NOVEMBER 21, 2005 VOL. LVII, NO. 21

NATIONAL REVIEW

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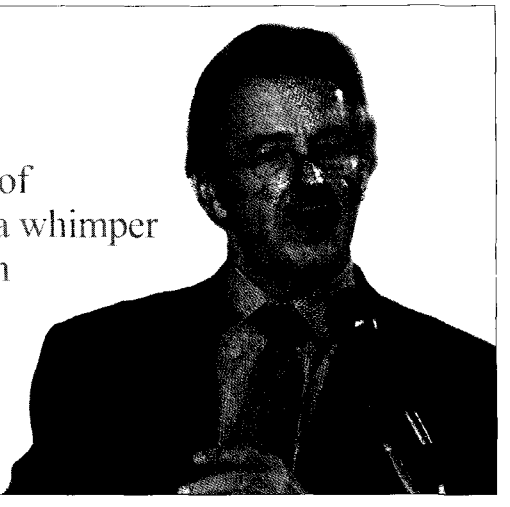
■ ON THE COVER



The two-year criminal investigation into the "outing" of Valerie Plame Wilson as a CIA employee ended with a whimper rather than the bang so obsessively sought by the Bush administration's critics. Much remains unknown. Yet special counsel Patrick Fitzgerald's indictment of a single administration official illustrates sharply the chasm between law and politics. *By Andrew C. McCarthy*

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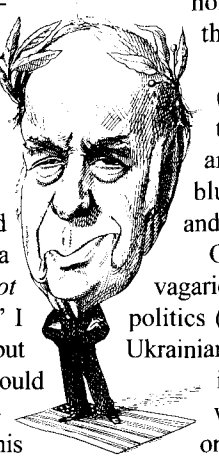
letters to the editor

THE KENSINGTON ROTTWEILER

Congratulations on David Pryce-Jones's assessment of the ridiculous Harold Pinter (Nov. 7). Those Swedes must have finally lost their marbles. Is there really no other writer in the world worth a Nobel?

Apart from his pointless poetry and bad dramas, Pinter is—as Pryce-Jones suggests—a thoroughly odious human being: Even having married into one of our most distinguished and charming families seems to have failed to housetrain him.



A few years back, after he had affronted my wife, I called him a Rottweiler—"You talk a lot of *rot* and no one has *viler* manners." I thought it quite witty at the time, but for a moment I thought Pinter would hit me. Fortunately, I am taller—so, reaching into the depths of his thesaurus, he settled for calling me, in print, "a little prick." Where he would have derived these vital statistics I do not know; not, I trust, in "fashionable Kensington," to which Pryce-Jones refers.

It may be that the noble founder of this much-abused prize would himself have known better how to evaluate Pinter—a stick of his product up the right place.

Sir Alistair Horne
Washington, D.C.

WE KNEW IT WAS A STARCH

It is sad to see NR fall into the history-distortion game played by the MSM. To wit, the noodle item in the Nov. 7 issue ("The Week"), last sentence, which informs us that "you don't get spaghetti with just one" meatball. As the globally famous song of the 1940s had it (was it Spike Jones and his band of renown?): "You get no *bread* with one meatball."

Edward G. Tripp
Cincinnati, Ohio

UKRAINIAN NATIONAL STANDARDS

I found John O'Sullivan's "Restoration" to be an entertaining and informative report on the "new-old Poland" (Oct. 10). I am, however, troubled by his reference to a group of Ukrainians who "wave[d] the blue and white flag whenever Ukraine's president, Viktor Yushchenko, appear[ed]."

What is the antecedent of "blue and white flag"? If the author, as one must suspect, is referring to Ukraine's national standard, that flag consists of two horizontal bands of equal size, the top blue (symbolic of the sky) and the lower *yellow* (symbolic of wheat). I assume that O'Sullivan simply made an honest mistake, and wrote blue and white instead of blue and yellow.

On the other hand, given the vagaries and psychoses of Ukraine's politics (and politicians), perhaps the Ukrainians who so greeted Yushchenko in Poland *did* wave blue and white banners, for reasons that only they can explain.

John T. Zubal
Cleveland, Ohio

GENERATION GAP

I thought I'd correct a minor error in Richard Brookhiser's "The Hunt Is On" (Oct. 24). He refers to the first stop in his search for black jeans as "the Gap." This is like saying you're going shopping at "the Sears," eating at "the Applebee's," or are going to buy the latest CD by "the Eurythmics" (are they even still recording?). It's "Sears," "Applebee's," and "Eurythmics," none preceded by "the." So, too, is it with Gap.

How do I know? My kids told me—when I once suggested we stop at *the* Gap.

Andrew Turnbull
Epsom, N.H.

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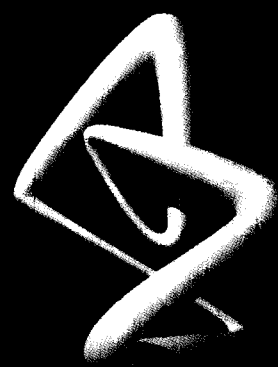

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THE WEEK

■ We suspect that it won't really be Fitzmas until Karl Rove's chestnuts are roasting on an open fire.

■ They are called servicemen because they serve us with their time, their efforts, and, too often, their lives. The armed forces of the United States have lost 2,000 servicemen in Iraq since March 2003. Many feared that deaths would match or exceed that number in the first shock of combat, but though Saddam's army collapsed in three weeks, his fight has been carried on by die-hard terrorists and foreign jihadists. Every life lost is a world lost, and death is especially bitter in a war that seems to have no shape. But we know what shape the Terror War had for many years—attacks on Americans at home and abroad, culminating in 9/11. We fight the terror masters in their dens so they will be less able to murder us here. We honor those who have fought for us.

■ The president is fighting a twilight struggle against two cunning, ruthless foes—not just Islamofascism, but also the American foreign-policy bureaucracy. That bureaucracy has recently lashed out at George W. Bush. Lawrence Wilkerson, former chief of staff for Colin Powell, wrote in an op-ed for the *Los Angeles Times* that Bush's foreign policy had been made by a "secretive, little-known cabal" led by Dick Cheney and Donald Rumsfeld. Secretive little-known cabals ought to be run by people less well-known than the vice president and the secretary of defense. Wilkerson argues that the State Department has the primary burden of shaping American foreign policy, but since the first president to heed the foreign-policy advice of someone other than his secretary of state was George Washington, the chains of command have been tangled for some time. Brent Scowcroft, former everything, was the subject of a *New Yorker* profile, in which he expounded his brand of foreign-policy "realism" in all its Larry David–esque unloveliness. Of democracy in the Middle East: "The bad guys are always better organized. Always." Of Lebanon's Cedar Revolution: "something we have to worry about." Of mankind in general: "I'm a realist in the sense that I'm a cynic about human nature." Status-quo worship gave us 9/11. Scowcroft wants us to be hopeless *and* insecure. Any takers?

■ Scowcroft mentioned that he never saw the point of Ronald Reagan's calling the Soviet Union an "evil empire." George W. Bush drew different lessons. He went to the Reagan Library to speak at the opening ceremonies for a pavilion housing the Reagan-era Air Force One. It could have been a personal affair, focused on the library and on Mrs. Reagan. But Bush also raised his eyes. He recalled the trips Reagan had taken, ending with his 1982 trip to Britain which included his Westminster address to Parliament: "While our military strength is a prerequisite to peace, the ultimate determinant in the struggle will be not bombs and rockets, but a test of will and ideas, a trial of spiritual resolve . . ." As Reagan saw the Cold War, so Bush sees the Terror War: "Those who despise freedom and progress have condemned themselves to isolation, decline, and collapse. Because free peoples believe in the future, free peoples will own the future." Footnote: They called Reagan a cowboy too. Does Gorbachev, we wonder?

The prince comes calling
(see page 12).

■ The McCain amendment on torture passed the Senate 90–9. That sort of margin usually means legislation is meaningless or noxious. The McCain amendment might be a little of both. It codifies the Army Field Manual with regard to the treatment of prisoners and reaffirms the prohibition on cruel and inhuman treatment in the Convention Against Torture. Since the U.S. already uses the Army Field Manual for its prisoner policy and abides by the anti-torture convention, the McCain amendment is, strictly speaking, a redundancy. The rub is how the vague terms in the Army manual and the convention are defined. If the McCain amendment were more than grandstanding, it would say explicitly whether all stress techniques are prohibited, and if not, in what broad circumstances they are acceptable. Our view is that it is right and in our interest that enemy prisoners be treated humanely. The chain of command should have had a much better handle on how detainees were being treated (which would have prevented some of the infamous abuses in Iraq and Afghanistan). But we don't want to rule out pressuring high-value detainees in ways that fall short of torture but would draw the disapproval of Human Rights Watch. We have gained valu-

ROMAN GENN

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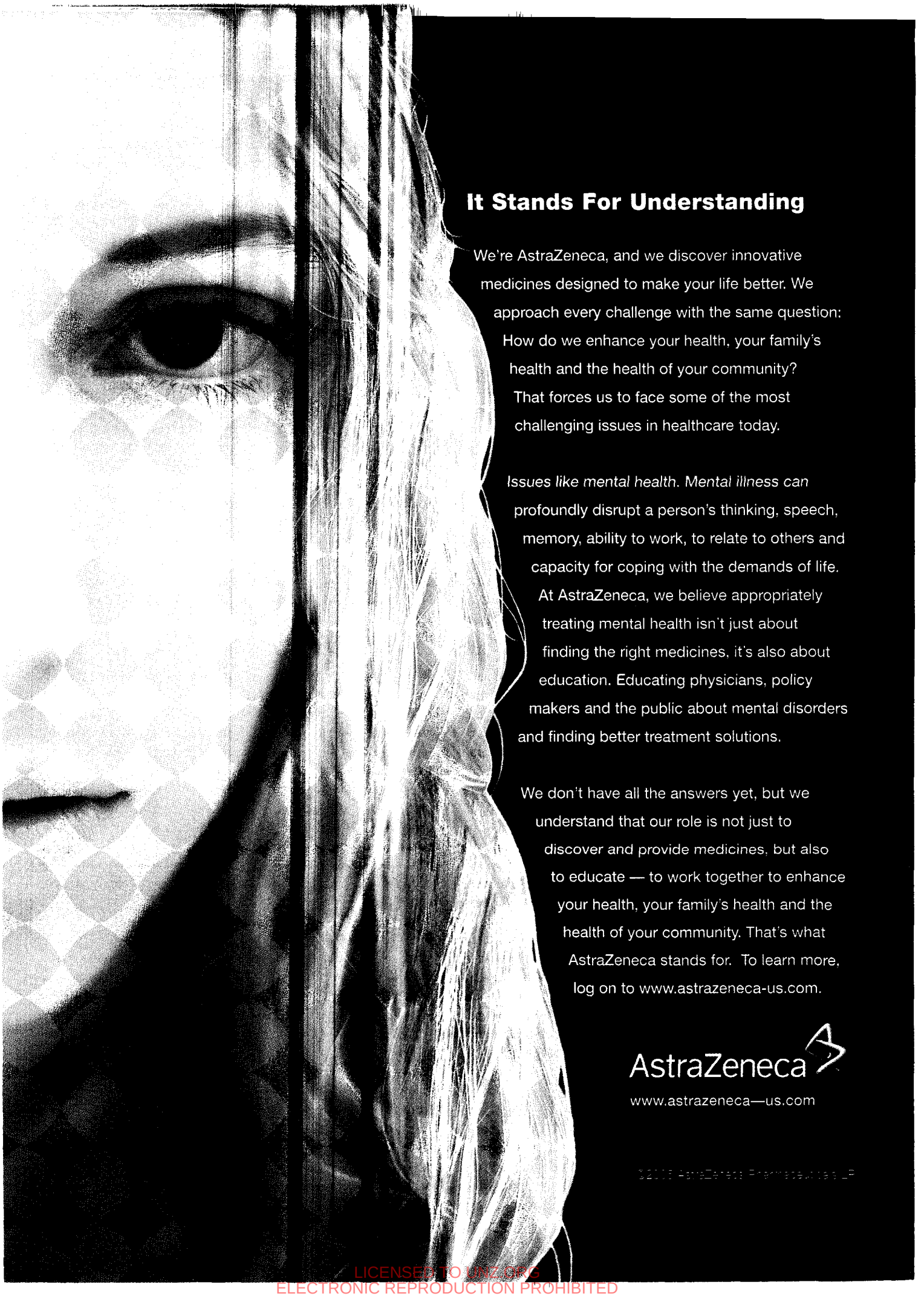

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THE WEEK...

able intelligence through such means and could do so again. In today's political environment, however, it is impossible to say this without being accused of wanting to stack naked detainees in pyramids and break their legs. And here is where the McCain amendment could do harm: It will be widely interpreted as making it impossible to treat enemy detainees any differently from U.S. criminal suspects. This is an unreasonable standard, and one we will come to regret.

■ Markets, financial analysts, economists, pundits, and really, just about everybody, reacted favorably to President Bush's appointment of Ben Bernanke to succeed Alan Greenspan at the Fed. Liberals exulted that Bush had not picked a supply-side crazy, their evidence being that some supply-siders had criticized Bernanke. But supply-siders disagree among themselves about monetary policy all the time, and most of them were happy enough with the nomination. Bernanke is an inflation hawk who believes that the Fed should set clear rules to govern monetary policy. His official actions will be more important than any advice he might give to lawmakers. But that advice is also likely to gladden supply-siders. While his views may change over time, he has said that Bush's tax cuts have helped the economy and should be extended. The markets' exuberance about the news of his selection seems to us entirely rational.

■ Oil companies are making record profits. ExxonMobil made $9.92 billion in the last quarter, which is 75 percent higher than the same period last year and more than any company has ever made during a quarter. Naturally, politicians are upset. Democrats are urging a windfall-profits tax, and Republican majority leader Bill Frist wants the Senate to investigate. Frist says, "If there are those who abuse the free-enterprise system to advantage themselves and their businesses at the expense of all Americans, they ought to be exposed, and they ought to be ashamed." An investigation is an excellent idea. Perhaps the senators can subpoena some high-school economics teachers who will explain supply and demand to the senators. The companies' profits, and prices, have not risen because their executives have suddenly decided that they would like to make a lot of money. Presumably they generally strive to maximize their profits. Other figures put their success in this endeavor in context: ExxonMobil makes 9.8 cents for every dollar in sales, compared with 13.8 cents for McDonald's and 21.2 cents for Coca-Cola. High profits increase the incentive for oil companies to invest in production, and high prices increase the incentive for other businesses to cut back on their energy use. Both of these things will do more to restrain prices than senatorial grandstanding will.

■ The president's commission on tax reform outlined two proposals. The less ambitious one would replace the five tax rates we currently pay with three, and drop the top rate from 35 percent to 33. It simplifies the tax code—eliminating the Alternative Minimum Tax, for example—and reduces tax penalties on investment. The more ambitious proposal goes further in cutting taxes on investment and simplifying the code, and brings the top income-tax rate down to 30. Both plans gradually limit the deduction for mortgage interest in a way that affects at most 5 percent of houses in any year. They limit deductions for high-end health plans, too. And they eliminate the deduction for state and local taxes. These tax-break-limiting proposals, as defensible and modest as they are, are likely to be the most controversial elements of reform. They will probably have to be made more modest still. We wish the commission had done more to reduce the tax burden on families, who have been shouldering more and more of the overall burden in the last few decades. But the commissioners' relative indifference to that problem was predictable, reflecting as it did a typical blind spot of free-market economists. And what the commissioners have proposed is worthwhile.

■ In our last issue, we praised President Bush for suspending the Davis-Bacon regulations in order to increase the speed and decrease the cost of post-Katrina reconstruction. We are sorry to report that he reinstated those regulations under pressure from a score of congressional Republicans friendly to organized labor. If the White House won those congressmen's support for some budget restraint in return for the concession, as some reports suggest, then the deal was probably worth it. But the political cowardice of those congressional Republicans is disheartening. Neither Steve LaTourette of Ohio nor Frank LoBiondo of New Jersey, two of the congressmen, would have lost reelection if the administration had stiffed the unions.

■ Sen. Sam Brownback deserves special commendation for his role in the Miers withdrawal. Early on, he voiced concerns that other senators shared but did not express. When political operatives connected to the White House made clumsy attempts to intimidate him, he neither gave in nor lashed out. His demand for documents both attempted to respect presidential prerogatives and created a face-saving way out for the nomination. Once Miers withdrew, he refrained from bragging about his victory. We tend to think that without Brownback's opposition, the nomination would have collapsed more ignominiously during hearings. But even supporters of the nomination should concede that Brownback acted gracefully and intelligently on his opposition.

■ When New Hampshire senator Judd Gregg won a small slice of the $340 million Powerball lottery a few weeks ago, the Beltway was abuzz with financial advice: Pay down the national debt; set up a fund for Republicans mired in legal scandals; give senatorial colleagues interest-free loans. Gregg was having none of it, and instead explained that he would use at least some of the money—$850,000 before taxes, a cool half a million after—for personal use, which means "whatever my wife tells me to." There were a number of fine quips from all sides, but the winning line arrived courtesy of New Hampshire Democratic-party chairman Kathy Sullivan. "There is a God—he did not win the whole thing," she said dryly. "Judd Gregg was born with a horseshoe on his posterior. His whole life has been marked by a series of good fortune." Of course, she noted, "if he wants to send $10,000 my

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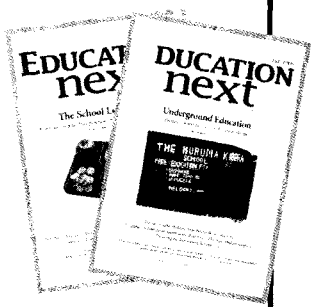

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"Acting White"

The social price paid by the best and brightest minority students

"Acting white" was once a label used by scholars to characterize academically inclined, but allegedly snobbish, minority students who were shunned by their peers. Now that it has entered the national consciousness—perhaps even its conscience—the term has become a slippery, contentious phrase whose meaning is open to many interpretations. What I mean by acting white is a set of social interactions in which minority adolescents who get good grades in school enjoy less social popularity among their same-race peers than white students who do equally well academically. For the small percentage of black and Hispanic students who attend private school, however, I find no evidence of a trade-off between popularity and achievement. Most studies of academic achievement find little or no benefit of attending a private school for whites but quite large benefits for African Americans. It may be that blacks attending private schools have quite a different peer group.

—Roland G. Fryer

Advanced Placement Turns Fifty

An elite program designed in anticipation of cold war needs

The idea for the Advanced Placement (AP) exam emerged from elite colleges, prep schools, and high schools as a way of accelerating and fortifying the education of the nation's future leaders in anticipation of cold war national-security demands. A half-century later, the cold war over, the AP program is still with us. The essentials remain the same: high-school students take college-level courses, taught by teachers in their schools, and then take exams designed by the College Board to show they have mastered the subject at college-level proficiency. But despite the vast expansion of the number of students taking AP courses and exams since 1956, it is still the case that less than 10 percent of all those entering high school ever pass an AP examination.

—Andrew Mollison

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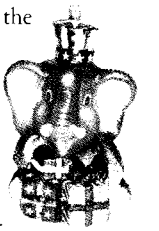

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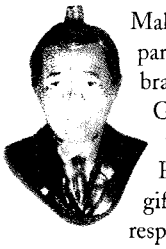

Make President George W. Bush a part of your family's holiday celebrations with the "President George W. Bush" Christmas Ornament. This 4" likeness of President Bush makes a unique gift for friends and family who respect and support our nation's leader. Selected from Christopher Radko's exclusive "Stars and Stripes Collection."

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Go behind the scenes with Ann Coulter, and meet the woman behind the stinging barb and the quick wit. You'll see the "conservative movement's diva" at her best in original interviews where she takes on the likes of Katie Couric and Phil Donahue. You'll see Ann give a college lecture, where she deftly handles her hecklers and graciously receives her many fans. You'll also get a rare glimpse of the real Ann Coulter when she talks about everything from her childhood in the suburbs to her passion for the Grateful Dead. Ann's legions of fans won't want to miss this DVD full of exclusive interviews, classic television clips, and Coulter insight.

Running Time: 145 minutes

Is It True What They Say About Ann? (DVD)
Code: C6290
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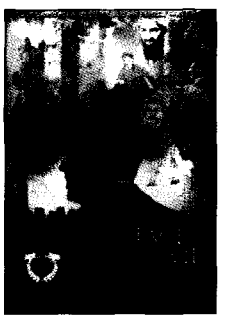
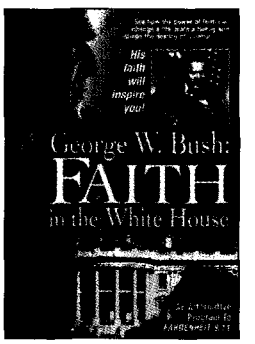


Ronald Reagan freed a billion slaves from their Communist masters... *In the Face of Evil* is the story of this man and this nation's journey through the heart of darkness — and what that journey means for us today. This film is not a biography of Ronald Reagan, but a hard-hitting look at leadership and moral courage. This award-winning documentary chronicles the brutal conflict between totalitarianism and freedom as seen through Ronald Reagan's forty-year confrontation with Communism. As the 21st century's great conflict between freedom and Islamic Fascism takes shape, *In the Face of Evil* provides an invaluable lesson for how the U.S., and the free world, must combat the forces of Evil... if we are to survive.

Running Time: 110 minutes

In the Face of Evil (DVD)
Code: C6299
Price: $25.95



Unlike any other president in the history of our nation, George W. Bush boldly, publicly, and genuinely lives out his faith on the job. *George W. Bush: Faith in the White House* offers a never-before-seen insider's look at how one man's dedication to prayer and the daily application of God's Word transformed his life and leadership. His dependence upon God gave him the exact clarity of vision and quiet confidence needed to lead us through the 9/11 terrorist attacks and the ensuing wars in Afghanistan and Iraq. Witness for yourself George W. Bush's remarkable journey of faith — from the bar room to the Oval Office — in this behind-the-scenes documentary.

Running Time: 70 minutes

George W. Bush: Faith in the White House (DVD)
Code: C6705
Price: $19.95

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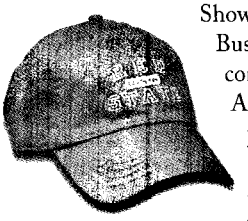

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Red State USA Ball Cap
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Price: $19.95

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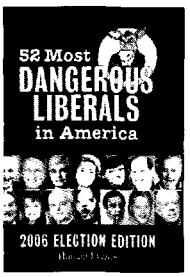

They're at it again. The Liberals are gearing up for the 2006 elections... and they'll say anything to get elected. Now you can keep track of the liberal politicians, Hollywood "activists," kooky Leftist organizations, and mainstream media elite who pose the worst political threats to America this election season.

National conservative weekly Human Events has identified which liberals to keep an eye on during the upcoming elections. Each card in the brand new *52 Most Dangerous Liberal in America* Card Deck features a "Dangerous Liberal" and a self-condemning quote to back up why that particular Leftist has made the cut to be included in this notorious deck.

When your family members pull these card decks out of their stockings on Christmas morning, you can expect a lively political discussion... or rousing game of cards... or both!

52 Most Dangerous Liberals in America
2006 Election Edition Card Deck
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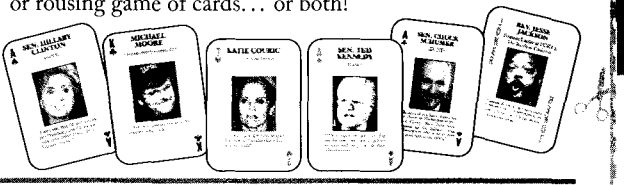
Price: $14.95



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Through an exclusive arrangement with historic Mount Vernon, we are proud to bring you a Special Edition American Flag. Each American flag in this edition has been flown at Mount Vernon, the beloved estate of the Father of Our Country, George Washington. You'll also be proud to display this flag because of its high-quality construction. This 3' x 5' American Flag is constructed of durable, long-lasting nylon, so you can proudly fly it outdoors. The stripes are sewn and the stars are embroidered. Every flag is made, with pride, in the USA. Each flag is accompanied by a Certificate of Authenticity that is dated and signed by Mount Vernon's Executive Director.

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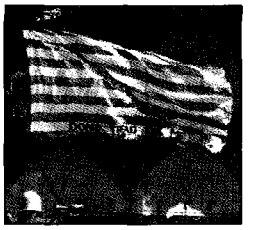
Mount Vernon image courtesy of Mount Vernon Ladies' Association



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U.S. Navy Photo by Photographer's Mate 3rd Class Todd Frantom

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THE WEEK...

way, I won't complain." Humorous, pithy, self-effacing, acerbic—not bad.

■ Remember the Iraqi constitution—you know, the one that was destined to blow up? As it happened, it didn't blow up, but was approved in a referendum with 79 percent voter turnout. One gets the sense, though, that our objective, impartial news media aren't much interested in that success. Following the vote, the evening news broadcasts of ABC and CBS devoted a single sentence each to the constitution, instead focusing mainly on stories about American casualties, anguished Army medical personnel, grieving parents back home—all legitimate stories, to be sure, but hardly the whole story of the day. NBC gave the referendum slightly more attention, but was sure to dwell primarily on continuing violence. Oh yeah: Did you hear that the 2,000th U.S. soldier died in Iraq? Just checking.

■ Mahmoud Ahmadinejad, the new president of Iran, said "Israel must be wiped off the map." Since he said it at a student rally called "The World Without Zionism," it was not exactly a surprise. Much critical comment ensued, even a tut-tut from Kofi Annan, and some agencies of the Iranian government tried to downplay the matter: "Iran is committed to its obligations stated in the United Nations charter," said the Foreign Ministry. Ahmadinejad has gotten off to a boisterous start, but why assume that the mullahs who control him and all Iranian politics are displeased? The president whips up the mob; his colleagues can play the game of good mullah, bad mullah, that the Europeans and the State Department so devoutly hope will work out. Meanwhile Iran marches on with its nuclear-weapons program. When that is complete, it can begin its exercises in Islamist cartography.

■ Bashar Assad, Syria's Baathist dictator, is looking mighty lonely these days. In response to a report finding that high-level security officials in Assad's government conspired in the assassination of former Lebanese prime minister Rafik Hariri, the U.N. Security Council has passed a resolution demanding that Syria cooperate with an investigation into the matter or face "further action." That is, admittedly, a weak-sounding threat—for which we can blame China and Russia, which threatened to veto the resolution if it included mentions of economic sanctions or language calling on Syria to renounce support "for all forms of terrorist action and all assistance to terrorist groups." That such language is even controversial is further proof—as if any were needed—of the U.N.'s moral vacuity. Still, anything that isolates Assad and weakens his prestige in Araby—as this resolution surely does—should be welcomed.

IRAN GOES PSYCHO

Reprising Khomeini's anathema,
Directed at Israel's Jews—
"Wiped off," as cartographers put it—
The president's Persian made news.
Uncharacteristically, Kofi
Was exercised by the event,
Though France, with Paree oozing Arabs,
Exhibited less discontent.

—W. H. VON DREELE

■ Three teenage girls on their way to school in eastern Indonesia were decapitated by a gang of masked men dressed in black. This was in a district rife with Islamist violence against Christians. Back in May, a bomb killed 22 people in a nearby Christian town. All evidence suggests that the schoolgirl killings were carried out by Islamic terrorists. One of the girls' heads, for example, was left outside a recently rebuilt church some miles away. London; Nigeria; the Caucasus; India; Indonesia; the cancer of Islamic terrorism continues to metastasize. This is a world war, and will be a long one.

■ There's nothing like a good comeuppance. Over the past few years, British MP George Galloway has been one of the loudest and dumbest critics of the war in Iraq. He has also been a staunch apologist for some of the worst elements the Middle East has to offer. Before the liberation of Iraq, Galloway lavished frequent praise on the regime of Saddam Hussein. Post-liberation, he has become an avid supporter of the terrorist insurgency. Anyone who has ever seen him perform in public knows that his depravity is surpassed only by his pomposity, making it particularly gratifying that two independent reports have just implicated him in the Iraqi Oil for Food scandal. In the last week of October, a U.S. Senate subcommittee investigation traced $150,000 in Saddamite oil money to the bank account of Galloway's (now-estranged) wife. Days later, the final release of the U.N.'s Volcker report uncovered an additional $120,000 in illicit transfers. On top of this, the reports traced hundreds of thousands of dollars more that were channeled into an organization that Galloway used to lobby for the lifting of Iraq sanctions. Now, in addition to having his original mischief exposed, Galloway may face perjury charges both in the U.S. and in Britain, where he has vehemently denied corruption charges under oath. Strange to say, but true: He gives politicians a bad name.

■ French police are talking about "guerrilla" violence, and interior minister Nicolas Sarkozy vowed to wage "war without mercy." The uproar began when two young African men electrocuted themselves in the Parisian suburb of Clichy-sous-Bois, supposedly while fleeing police. (They climbed into a relay station and fell against a transformer; police deny they were being chased.) Days and nights of rioting followed. France's long-running policy toward the Third World has been to truckle to its most odious despots, from Emperor Bokassa to Saddam Hussein; to allow their desperate, unassimilable subjects to do the nation's scut work; and to resort to sporadic crackdowns, from banning veils in public schools to Sarkozy's bravado. For a top-down country, with a super-educated, rationalist elite, this

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THE WEEK...

seems like an unsatisfactory game plan. If they work out the kinks, they should let us know.

■ One of Prince Charles's purposes in making his first post-Di visit to these shores, according to the *Sunday Telegraph*, was to communicate his concerns that the United States has been "too confrontational" in its attitudes toward Islam. The *Telegraph* infers this purpose from Charles's public pro-Muslim statements, and perhaps from insider information. Charles's staff simply said that he never issues "political messages around religion." Whatever Charles's intentions, surely he knows that the United States during the last four years has liberated tens of mil-

Going to Hell, or Whatever

PRESIDENT BUSH should have ended his prepared comments on his nomination of Judge Samuel Alito with "Release the hounds!" Within minutes of the nomination, packs of our best and brightest legal minds were loosed upon the plains of the Internet, felling liberal wildebeests right and left.

While some doe-eyed news anchoresses were fretting about Alito's "anti-abortion" stance, our side was posting detailed memoranda on why the liberal herd was wrong. Julian Sanchez at *Reason* magazine's website sank his teeth into the talking points distributed by leading liberal activist groups. NRO's own brilliant legal blogger Ed Whelan spent the morning sucking the marrow out of the bones of one argument after another.

By 10:25 in the morning Whelan was already explaining that one "abortion case" that had occasioned criticism of Alito wasn't really about abortion at all. "The threshold question of administrative law that divided the majority and the dissent" wasn't the sanctity of life, but rather "the question whether principles of so-called *Chevron* deference applied to the HHS action or whether instead so-called *Skidmore* deference applied."

And here I thought "*Chevron* deference" meant going there even if the gas was cheaper at Citgo.

The first question you should ask of anyone who insists that Alito (or Roberts or Scalia or Thomas) is a rabid ideologue bent on destroying liberty and joy is a simple one: Do you believe something can be wrong and constitutional at the same time? Or do you think that something can be right and unconstitutional?

This is the fundamental question separating the "left" and "right" on judges. Indeed, Whelan's heavy lifting on the details is a demonstration of that. Conservatives, God love 'em, actually think the Constitution *means something*, which is a nice way of saying it doesn't mean *everything.*

This is a point of deep confusion on the left. If you wade through the talking points generated against Alito by the various interest groups, this confusion leaps from the page. Alito upheld the constitutionality of spousal-consent requirements for women seeking abortion. Bam! "Alito would overturn *Roe* v. *Wade*"! Alito ruled that the Family and Medical Leave Act had not breached states' sovereign immunity under the Eleventh Amendment. Therefore, according to the Daily Kos blog, "for Alito, workers shouldn't be able to take 12 weeks of unpaid leave to take care of newborns or loved ones." A case involving whether the police had a suitable warrant to strip-search a woman and her daughter is translated by Kos into "Not only [are] strip searches of 10-year-old girls okay, but of wives as well since they are all merely that man's chattel."

This is the same argument the Left has used for decades. We were told that John Roberts's decision upholding the constitutionality of the District of Columbia's policy of zero tolerance of eating on the subway proved that he actually favored a policy of having young girls handcuffed and booked for eating a French fry. Ted Kennedy's evil diatribe against "Robert Bork's America" was among the most anti-intellectual, demagogic displays in American political history.

Is it really so hard to grasp that one can believe that allowing people to take time off from work to deal with family emergencies is a great and good thing, but that maybe, just maybe, the Constitution doesn't obviously let Congress authorize state-government employees to sue for that benefit in federal courts? In a nation of laws, reasons matter. If the Supreme Court had ruled in *Brown* v. *Board of Education* that "separate but equal" was unconstitutional because ducks go quack and vests have no sleeves, it would possible to applaud the result even as you condemned the reasoning behind it, right?

One is tempted to note that the heroic justice of the Progressive era, Oliver Wendell Holmes Jr., was deified by liberals for emphasizing just this point about the role of judges. "I always say, as you know, that if my fellow citizens want to go to Hell I will help them," he declared. "It's my job."

But the proponents of a living constitution don't want to get bogged down arguing about the meaning of the Constitution; they want to argue about right and wrong. And a good constitution is one that always upholds what is right and never countenances what is wrong. This is why liberal justices are now fishing for precedents in foreign countries, because they can't find what they need in actual precedent or text.

These justices are lawyering themselves right out of a job. Because if the Supreme Court is there to decide what's right and wrong rather than what's constitutional or unconstitutional, then we don't need lawyers on the bench at all. Surely if the questions before the Court concern what's good and what's bad, there are people—priests, rabbis, truck drivers, etc.—more qualified to decide such things than a bunch of lawyers.

—JONAH GOLDBERG

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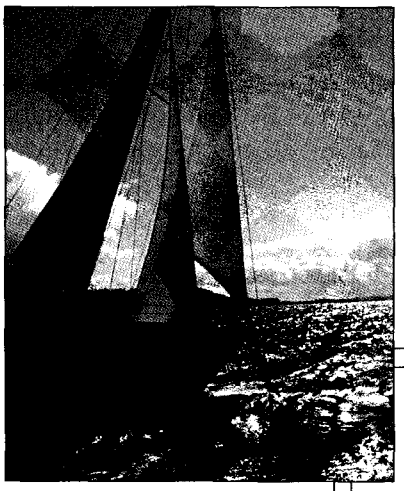
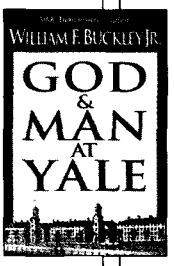


Happy 80th Birthday, Bill Buckley!

A Lifetime of Achievement

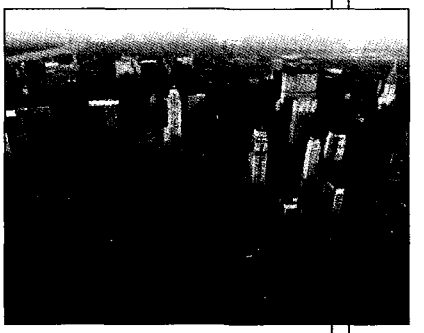
1925: William F. Buckley Jr. born in New York City

1950: Receives a B.A. with honors from Yale University

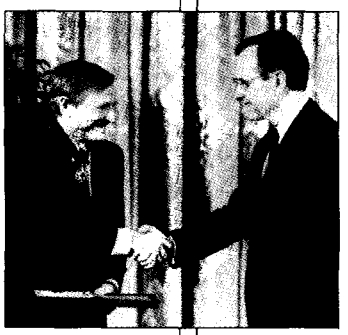


1951: Publishes *God and Man at Yale*

1955: Founds *National Review* magazine



1965: Runs for New York City mayor and receives 13.4 percent of the vote



1966: Begins 33-year run as host of television's *Firing Line*

1980: Wins American Book Award for Best Mystery for *Stained Glass*

1991: Awarded the Presidential Medal of Freedom

2004: Publishes *Miles Gone By: A Literary Autobiography*

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THE WEEK...

lions of Muslims in Afghanistan and Iraq from despots. He knows this because his own nation has been with us every step of the way. Doesn't the modern monarchy show its discretion "around" politics by understanding the policies of its own elected government?

■ The one thing to be said in favor of the P.C.-"diversity" cult is that it occasionally adds to the world's stock of fun by throwing up some hilarious linguistic absurdity. Consider, for example, Jones College, a college-prep selective high school in central Chicago. Naturally, Jones has an African-American Club, and that club has a faculty adviser, name of William McHenry. Mr. McHenry got into a spot of bother this year with a school event he helped organize, called "Other Grammys." The idea of the event was to celebrate "society's left behind and overlooked"—you know: racial minorities, women, disabled people, and GLBTQs. In this spirit, the nomination ballots distributed to all students specified that straight white able-bodied males could not be nominated for awards. Well, there were faculty and parent protests, there was a fuss, and the Chicago public schools' legal department came out with a ruling: The ballot was discriminatory and had to be reworded. Mr. McHenry was far from gruntled. "I'm not excluding anyone," he said. "We're including people who have been excluded." You see, it's not exclusionary to include only peop. from formerly excluded groups, and to exclude the formerly included excluders. Got that?

■ There are, of course, worse things than being excluded. Participating in a panel at Howard University Law School, Mr. Kamau Kambon offered a solution to the problems facing black people: "We have to exterminate white people off the face of the planet." Some in the audience applauded. None audibly protested. When this story came out, Mr. Kambon was listed as "affiliated faculty" on the website of the Africana Studies department at North Carolina State University. His name has since vanished from that list. Why race hatred persists is an interesting question in human psychology. What might more profitably be asked is, What on earth was a man like this doing on the faculty of a public university, and addressing a conference at a prestigious law school? And: Why did anyone applaud?

■ Larry Flynt, proprietor of *Hustler* magazine, generously donated $1,000 to Hillary Clinton's Senate campaign. Given what we know about the goings-on in the Clinton White House, it's not hard to understand why Leisure-Suit Larry might feel a bond of sympathy with the Clintons. Alas, within a month of receiving the check, Mrs. Clinton returned it. "It's unbelievable," Flynt told *Newsday*. "But I'm used to this kind of hypocrisy." The way Mrs. Clinton's career is advancing, we'd all better get used to it. Flynt, in any case, is nursing hurt feelings, and says he's thinking of becoming a Republican. If we may presume to speak for Republicans at large, this comes under the heading "unwelcome compliments." The phrase "Republican pornographer" just refuses to trip lightly off the tongue.

■ We extend our hearty congratulations to Jim Bob and Michelle Duggar of Tontitown, Ark., on the birth of their 16th child. Mr. Duggar supports his family—he is a real-estate salesman, and a former state representative—and the Duggar children are homeschooled. They seem, to judge from the news pictures, to be well fed, well clothed, well housed, and healthy. Naturally this was all too much for some observers. Conspicuous among the Duggar-demonizers was *San Francisco Chronicle* columnist Mark Morford, who deplored the "values of the homophobic asexual [*sic*] Christian right" that, according to him, the family represents. But we see no reason that anyone not hopelessly alienated from normal human instincts, desires, and affections should not join this magazine in applauding the Duggars, and wishing them well.

■ The advance of genetics continues apace, but will it be accompanied by advances in ethics? There is cause for skepticism. Fertility doctors at Baylor College of Medicine have announced a new clinical study in which parents will be allowed to choose the sex of their children. Participation will be limited to couples who already have one child and seek to "balance" their families with a child of the opposite sex. It is easy enough to see how the wide-scale application of this technique, unfettered by eligibility criteria, could be harmful. Consider China, where the selective abortion of unborn daughters has led to a socially destabilizing imbalance in the ratio of men to women. Consequentialist analysis does not, however, get to the heart of the problem with techniques such as that to be offered at Baylor: What we should really be worried about is the assumption that certain kinds of people are more deserving of existence than others.

■ Good news and bad news from Wal-Mart. The good news is that the company plans to offer health-savings accounts to its employees. The more consumers use HSAs, the more transparent—and the lower—health-care prices should become. The bad news is that the company's CEO also came out for an increase in the minimum wage. We don't mind when Wal-Mart outcompetes mom-'n'-pop stores, which often pay lower wages than it does. But it should not be able to recruit the federal government to help it drive them out of business. Wal-Mart's recent decisions confirm that it is folly to expect corporations to act on the basis of philosophical consistency—and that they are more likely to promote the public good when they stick to their own business than when they lobby government.

■ There is no necessity for a movie actor, in his private life, to exhibit any behavioral resemblances to the characters he plays. Marlon Brando (*The Godfather*) was not a man of intense family loyalties; Dustin Hoffman (*Rain Man*) is not an idiot savant; James Mason (*Lolita*) was not a child molester; Charlton Heston (*The Ten Commandments*) claims no extraordinary relationship with God. We should therefore, perhaps, be neither shaken nor stirred by the news that the latest actor to play the role of Bond, James Bond, hates handguns. Says 37-year-old Daniel Craig: "Handguns are used to shoot people and as long as they are around, people will shoot each other." Sporting issues aside, this misses the point that, as James Bond himself understood perfectly well, there are people in the world who *need* shooting. As

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THE WEEK...

for those martinis, Mr. Craig says he likes his neither shaken nor stirred, but straight up. The wonder here is that a chap just 37 years old even knows what a martini *is*.

■ Americans honor Jefferson's statement that all men are created equal, though they also puzzle over it: Like some great writing, it is so taut as to be Delphic. Perhaps John Jay's parallel formula (in the constitution of the New-York Manumission Society) fleshes it out: "The benevolent Creator and Father of men ha[s] given to them all an equal right to Life, Liberty and Property . . ." In the Jim Crow South, blacks lacked the last two: They were effectively disfranchised, and their taxes supported institutions that were substandard or discriminatory. If they protested too vigorously, or otherwise made trouble, they could lose their lives by mob action. Rosa Parks's role in the Montgomery, Ala., bus boycott was coached and supported by a network of civil-rights activists. But she was the one who stepped up, by keeping her seat. She was a symbol of a great effort to realize America's principles. When she lay in state at the Capitol, Americans honored the effort, and her. R.I.P.

■ When the New York Giants drubbed the Washington Redskins on October 30, by a score of 36–0, the many fans of Wellington Mara could be forgiven for thinking that the outcome seemed divinely inspired. That's because the Giants' longtime owner had died five days earlier. He will be remembered not only for building and sustaining one of the best-run franchises in the NFL, but also for the revenue-sharing model that has guaranteed a level playing field for teams from large and small cities alike—a system that explains why professional football is more competitive than major-league baseball today. Mara fought for this arrangement for the good of the game, even though it arguably put a crimp in his personal bank account. Always a gentleman, he never sought to call attention to himself, but occasionally he spoke out, as when he criticized New York governor Mario Cuomo for attempting to reconcile Catholicism and abortion. Mara also was a driving force behind Life Athletes, an organization of athletes who support the right to life and promote abstinence before marriage. "God has blessed me with a long life," said Mara in 1999. "During that lifetime I have formed a clear perception of the absolute sanctity of life and the unshakable conviction that, of all God's gifts, it is the most precious—and is becoming the most tenuous." An exemplary man, dead at 89. R.I.P.

POLITICS

The Day After Fitzmas

If "Fitzmas Day," as the lefty blogs called it, wasn't quite a bust for Bush critics, neither did it realize the vision of political catastrophe for the administration that had danced in so many liberal heads.

Special counsel Patrick Fitzgerald said that his indictment didn't concern the case for the Iraq War one way or another. He didn't allege a broad conspiracy of Bush officials to out a covert agent. Neither did he (although he may in the future) indict Karl Rove, the central Bush player whom the Left hoped Fitzgerald would take down. What he instead charged in his five-count indictment is that Vice President Dick Cheney's chief of staff, I. Lewis "Scooter" Libby, lied to investigators about conversations with three reporters. This long-hyped, two-year investigation comes down, in other words, to one man's alleged dishonesty when investigators came knocking. This is not Watergate or Iran-Contra.

But neither is it a trifle. Conservatives shouldn't resort to warmed-over Democratic talking points from the 1990s: The prosecutor is out of control, there was no underlying crime, etc. It is the responsibility of anyone, especially a public official, to tell the truth to FBI agents and grand juries. If Libby didn't, he should face the consequences. Fitzgerald's indictment is not a Ronnie Earle–style partisan production, held together with Scotch tape and malice. But he gets to make an unrebutted case in his indictment. Libby will get his chance to respond, and Fitzgerald's case may look weaker with time.

Fitzgerald's merits aside, the limits of special-counsel investigations were once again evident in this case. Even if perjury is a serious offense, this is another instance in which there wouldn't have been a crime without an investigation.

It seemed unfair of him to say at his press conference that Libby damaged national security by revealing classified information, when he had not charged Libby with that offense, and at times he couldn't resist the prosecutor's temptation to self-righteously hype his case. But this was a departure for the otherwise restrained and responsible Fitzgerald. The Bush administration, for its part, has conducted itself with notable forbearance, avoiding the sort of smears to which the Clinton administration routinely resorted whenever a prosecutor proved inconvenient.

Fitzgerald's merits aside, the limits of special-counsel investigations were once again evident in this case. Even if perjury is a serious offense, this is another instance in which there wouldn't have been a crime without an investigation. Two years later, we still don't know important facts. Was Plame covert? Fitzgerald can't or won't say. Who is "Official A" (although we can all guess)? Who were the other unnamed officials? It is a prosecutor's job to build a criminal case, period, full stop. But in high-stakes political controversies, the public interest lies in disclosure. Then, everyone knows the facts and the public can make its judgments. Offending officials can be punished with resignations and public obloquy. Except in dire cases—say, bribery—that process should take precedence over prosecutions rather than the other way around.

Unfortunately, Republicans and Democrats engage in alternating opportunism over "the criminalization of politics," and it is the Democrats' turn to pin their political hopes on the work of a prosecutor.

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THE SUPREME COURT

The Next Justice

In one respect, Samuel Alito is a more reassuring nominee even than John Roberts was. Alito has a much longer track record as an appellate judge than Roberts did—and that track record suggests a deep understanding of the important yet "limited role that our courts play in our constitutional system" (as he remarked in accepting the nomination). His opinions marry sound judicial philosophy with careful legal craftsmanship. President Bush deserves credit for having the good judgment to nominate him.

Unlike the nomination of Harriet Miers, this nomination can be expected to play out predictably. Alito will have the enthusiastic support of conservatives. The Left began distorting his decisions within minutes of his nomination, presenting his vote to uphold a spousal-notification regulation as proof of inveterate hostility to *Roe* v. *Wade*. Alito may well end up voting against *Roe* and restoring democratic decision-making authority over abortion. But his decision on spousal notification has little bearing on the question.

Alito tried to apply Justice Sandra Day O'Connor's "standard," allowing regulations that do not place an "undue burden" on the "right" to abortion. He thought that four regulations, including a spousal-notification requirement subject to certain exceptions, could be allowed under that standard. In reviewing his decision, O'Connor and other justices agreed with him about three of those regulations, but concluded that spousal notification presented an undue burden. The undue-burden "standard" is not much of a standard at all. It was, instead, a typical bit of O'Connorite jurisprudence, depending for its application on the subjective impressions of a judge. Alito can hardly be blamed for not predicting where O'Connor's whims would take her.

Perhaps the legal niceties will be lost on much of the public. The underlying policy issue does not seem to be promising ground for the Left: Far from fearing spousal-notification laws, most Americans favor them.

■ In its December 19 issue (mail date: December 1), National Review will celebrate its 50th anniversary. This special edition will be substantial and historic—a keepsake. Among the scores of contributors will be Jeb Bush, Dick Cheney, Steve Forbes, Milton Friedman, Mark Helprin, Paul Johnson, Henry Kissinger, Rush Limbaugh, Charles Murray, Peggy Noonan, Richard Pipes, Roger Scruton, Tom Selleck, John Stossel, George F. Will, James Q. Wilson, Tom Wolfe—and, of course, William F. Buckley Jr. For more information about advertising in this blockbuster issue, please contact Jim Fowler, Advertising Manager, at 212-849-2843, or e-mail jifowler@nationalreview.com.

In another case used to indict Alito, he tried to apply a recent ruling by the Court on federalism. The Court had ruled that a ban on guns in and near schools was not a proper exercise of its power to regulate commerce among the states—although Congress could pass other laws, pursuant to other constitutional powers it possesses, to accomplish the same end. Alito ruled that the Congress, similarly, could not ban machine guns in the precise way it did. As it turned out, Alito was more serious about applying the high court's precedents than the high court itself turned out to be. Changing its mind has been this Supreme Court's prerogative, but lower courts are supposed to stay faithful to the precedents they have been given.

The world has changed since 1987, when Robert Bork's last name became a verb. The Republicans hold the Senate. We do not have to rely on the diligence and fastidiousness of the *Washington Post* and *New York Times* to clear up disinformation about the nominee. We suspect that liberals are going to discover to their chagrin that they have been right all along: You can't turn back the clock.

THE SUPREME COURT II

Winning by Withdrawing

Alito's nomination was made possible by the decision of Harriet Miers, in consultation with the White House, to withdraw her own. It was the right decision: It appeared highly unlikely that Miers would garner enough votes for confirmation, and there was no point in dragging out a defeat.

The withdrawal proved that the president, contrary to the attestations of some of his friends, is capable of recognizing and correcting his mistakes. It also showed that Miers's much-advertised willingness to put her own desires behind the needs of the president is real. That she immediately began work on a successor nominee is to her great credit.

But it must be said that the White House showed an astonishing incomprehension of conservatives until that moment. The weekend before her nomination was announced, White House aides told prominent conservatives that they would be "very happy" when the announcement was made—foolishly raising expectations that the nominee would be a known conservative all-star. The White House was taken aback by the conservative criticism. It then assumed that the criticism would blow over within a day. It thought that labeling the critics sexist and playing up the nominee's evangelical faith would dampen the criticism. And it treated the criticism as an elite phenomenon with no resonance outside the Beltway or inside the Senate. These assumptions proved wrong and counterproductive. Republican voters showed much weaker support for Miers than they had for John Roberts, and key Republican senators proved unwilling to support her.

The White House showed an astonishing incomprehension of conservatives until the moment that Miers withdrew.

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The White House spent October telling pro-lifers that Miers was one of them and telling pro-choicers that her pro-life views would have no impact on her decisions. Meanwhile, her meetings with senators went very badly, and the White House was slow to draw the appropriate conclusions. Bush's political operation needs a tune-up.

Liberals, and some sulky Miers supporters, are now saying that conservatives, as a result of their campaign against Miers, have lost any standing to complain about the "Borking" of nominees, the imposition of ideological litmus tests, and the refusal to give nominees up-or-down votes. Their arguments do not stand up to scrutiny.

Harsh words, including excessively harsh words, were sometimes said about Miers. But her own words were not distorted, and nobody said that "Harriet Miers's America" would feature a return to segregation. People who throw around the word "Borking" should review the actual record of 1987. The conservative critics of Miers did not demand that she proclaim herself to be pro-life; it was her defenders who emphasized (without proving) that point. And conservatives have complained about the filibustering of judges because they raise the bar for confirmation from 50 votes to 60. They deny confirmation to nominees who have majority support. Miers was withdrawn because she did not have majority support.

Liberals are not moved to make these weak arguments out of any lingering sense that Miers was a victim of injustice; they make them in order to hurt conservative nominees such as Alito. The conservatives who abet them have less rational motives. Many of them spent October explaining that conservatives skeptical of Miers's nomination should accept the fait accompli, be good party men, and move on. Her withdrawal is more of a fait accompli than her nomination ever was, and their continued anger about it undermines worthy Republican objectives more than the campaign against her nomination did. Their own principles should militate against their resentments. And all conservatives, whatever view they took of Miers—and there were conservatives of good standing on both sides—should unite behind Samuel Alito Jr.

notes & asides

■ Dear Mr. Buckley: Consider this morning's headline from the science section of my local newspaper: "We share 96 percent of our DNA with chimpanzees, which *begs the question*, just what is it that makes us human?" (Italics added.)

Notwithstanding the fascination of the topic—it was a very interesting article—I am concerned about the increasing use of the phrase "begging the question" as a synonym for "asking the question." Many years ago I was taught that "to beg a question" means to assume the answer is obvious, and thus to evade it, to try to change the subject to distract attention away from the core of the question itself. And my trusty *Merriam-Webster's*—which, admittedly, is not new but not nearly as old as I—bears me out. I quote: "beg, sidestep (begged the real problem); to assume as established or proved (beg the question)."

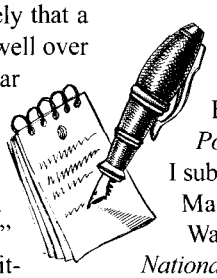
At least a half-dozen times in the last month I have seen printed evidence of this misuse. I'm afraid people will forget what it really means. Any thoughts?

Sincerely,
Clayton Alcorn
Cortland, N. Y.

Dear Mr. Alcorn: My thoughts are: Don't mess with Clayton Alcorn!

Cordially, WFB

■ Dear Mr. Buckley: This might seem like a very small thing, but I wonder if it is: When I was young, if we used "kid" or "kids" instead of "child" or "children," we were told immediately that a "kid" was a young goat. Now well over 90 percent of the time, I hear "kid" being used. This is from the mouths of well-educated (?) speakers and writers.



The same is true of the word "mom." No one is a "mother" anymore. Do you think that a little more respect in the use of language would help things? Am I being too sensitive?

Sincerely,
Winifred Krumpter-Schuck
(mother of five children)
St. Croix, V.I.

Dear Mrs. Krumpter-Schuck: Displacing "kid" is a lost cause. Pretty much ditto, "mom." Alas, as the wise man said, "There is no law in English save usage."

Cordially, WFB

■ Dear Mr. Buckley: Having recently celebrated my 90th birthday, am I too young to be an opsimath?

Sincerely,
David L. Soper
San Diego, Calif.

Dear Mr. Soper: No no no, you are perfect to be an opsimath! An opsimath is, simply, someone who learns late in life. Take a little longer, if you like!

Cordially, WFB

■ Dear Mr. Buckley: David Frum, writing in the *National Post*, led me to NATIONAL REVIEW. I subscribed. Imagine my glee to find Mark Steyn, my favorite "Happy Warrior," a past contributor to the *National Post*.

In subscribing to NATIONAL REVIEW, I've discovered another fave, Rob Long.

NATIONAL REVIEW is my education on U.S. politics. I don't give a penny towards Canadian politics.They've already got my 1 cent. The Liberals, in their cabal, look for more.

As a "Tory" (or Progressive Conservative), living as a "Republican" in Canada, I'm fearful of our Liberal government. I work in law enforcement. I'm not the sharpest knife in the drawer.

But I will be.

NATIONAL REVIEW? It has made me an "opsimath."

Best,
Heather Clark
Toronto, Ont.

—WFB

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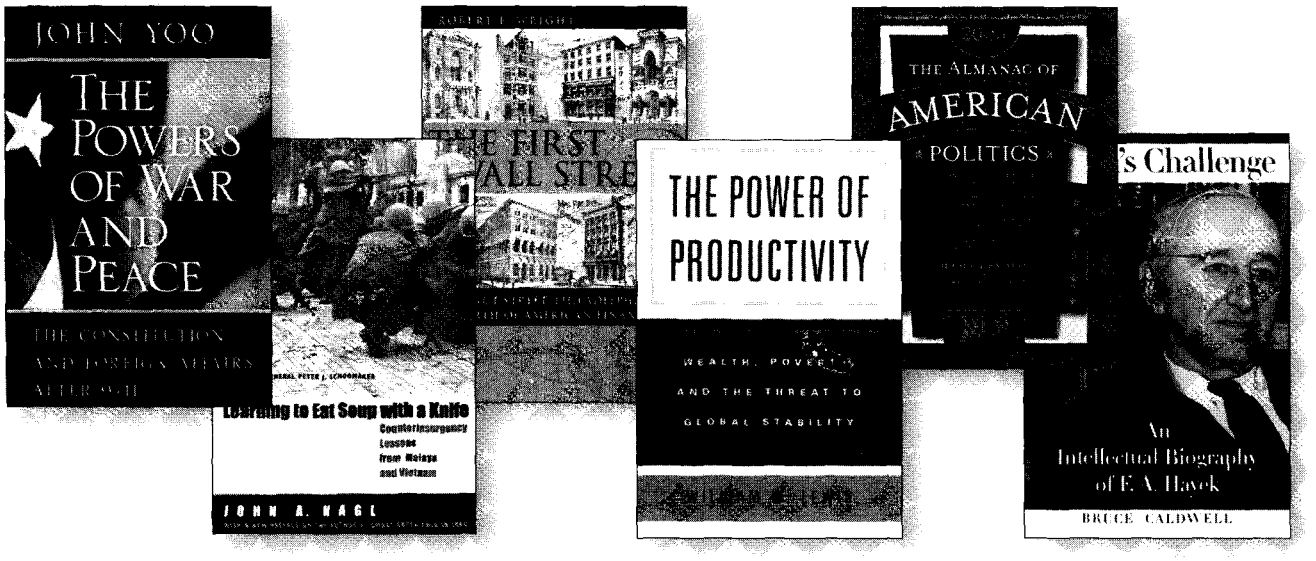
On the Issues

New books from Chicago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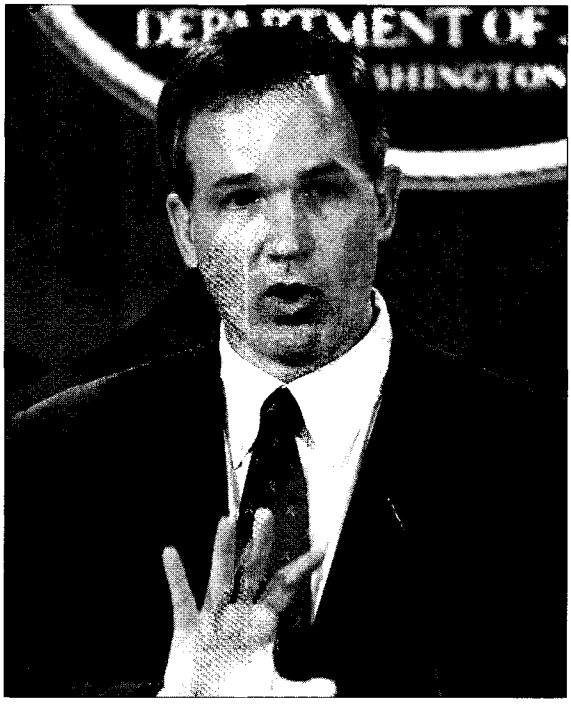

PATRICK FITZGERALD 10/28/05 GAMMA

■ COVER STORY ■

Playing Nice

President Bush gave the special counsel all he wanted—which the press, among others, may regret

BYRON YORK

REMEMBER protective-function privilege? Mother-daughter privilege? Bookstore-customer privilege?

In case you don't, all were novel but ultimately discredited legal defenses asserted by the Clinton White House and its allies in 1998, as the president tried to fend off a federal criminal investigation led by independent counsel Kenneth Starr. Used in conjunction with some legitimate but inappropriate-to-the-circumstances defenses, like executive privilege and lawyer-client privilege, they were part of a wall of obstruction built by the president in an effort to stop the investigation in its tracks.

Litigation over those issues dragged on for months. And while the president's lawyers tied up the investigation in court, his surrogates mounted a ferocious public-relations attack in the media. Early on, for example, one White House source told the *Wall Street Journal* that the Clinton forces planned to portray Starr as a "nicotine-stained tobacco lawyer." From there, things went steadily downhill.

And that wasn't all. Many of the Clinton figures questioned by Starr's grand jury formed a joint defense agreement, a tactic sometimes seen in organized-crime cases, in which they shared among themselves information from their respective testimonies—in an effort to tell prosecutors as little as possible. On every front, Clinton organized his underlings to resist the investigation.

That was then. This is now. For the past 22 months another White House, the Bush White House, has been involved in another federal criminal investigation, this one under prosecutor Patrick Fitzgerald. And what has been perhaps most remarkable about this investigation, from its inception on December 30, 2003, all the way to the indictment of top Cheney aide Lewis Libby on October 28, 2005, is the utter absence of Clinton-style defense maneuvers by the White House.

As far as we know, no administration figure has cited executive privilege, attorney-client privilege, or any nonexistent privileges. As far as we know, no one has formed a joint defense agreement. And we can say for sure that neither the president nor his surrogates have conducted a public-relations campaign against Fitzgerald.

"One thing you don't hear much about, at least with respect to President Bush, is that he has been exemplary in not attacking the prosecutor, in not making privilege claims, and in not getting credit for it," says Sol Wisenberg, a former prosecutor in the Starr office. "There is absolutely no comparison [to 1998], except to say that the Clinton White House was engaged in delaying tactics at every turn, and, from what we can tell, the Bush administration has been entirely the opposite."

While that is certainly laudable, in some Washington circles there is a nagging question being asked these days: Has the Bush White House actually cooperated *too much* with Fitzgerald, so much so that future administrations might be harmed?

The question is not whether Bush officials should have engaged in Clinton-style tricks; that should not have been done then, and should not be done now. Instead, the question is whether, by forcing staffers to sign waivers releasing reporters from any pledges of confidentiality regarding the CIA-leak affair, the White House has set a terrible precedent both for future presidents and for the press. The way in which George W. Bush acceded to Fitzgerald's demands virtually assures that there will be more, and perhaps increasingly intrusive, leak investigations in the years to come.

That is a real change from the way things have been. It has long been conventional wisdom in Washington that leak investigations don't work. But this one did. And the reason it worked was that Fitzgerald, with the president's cooperation, set up what was in effect a pincer operation. On one side, at Fitzgerald's request, the president told White House officials that they must sign the waivers (which were written by Fitzgerald). And on the other side, Fitzgerald told the press that, since White House officials had waived confidentiality, journalists would

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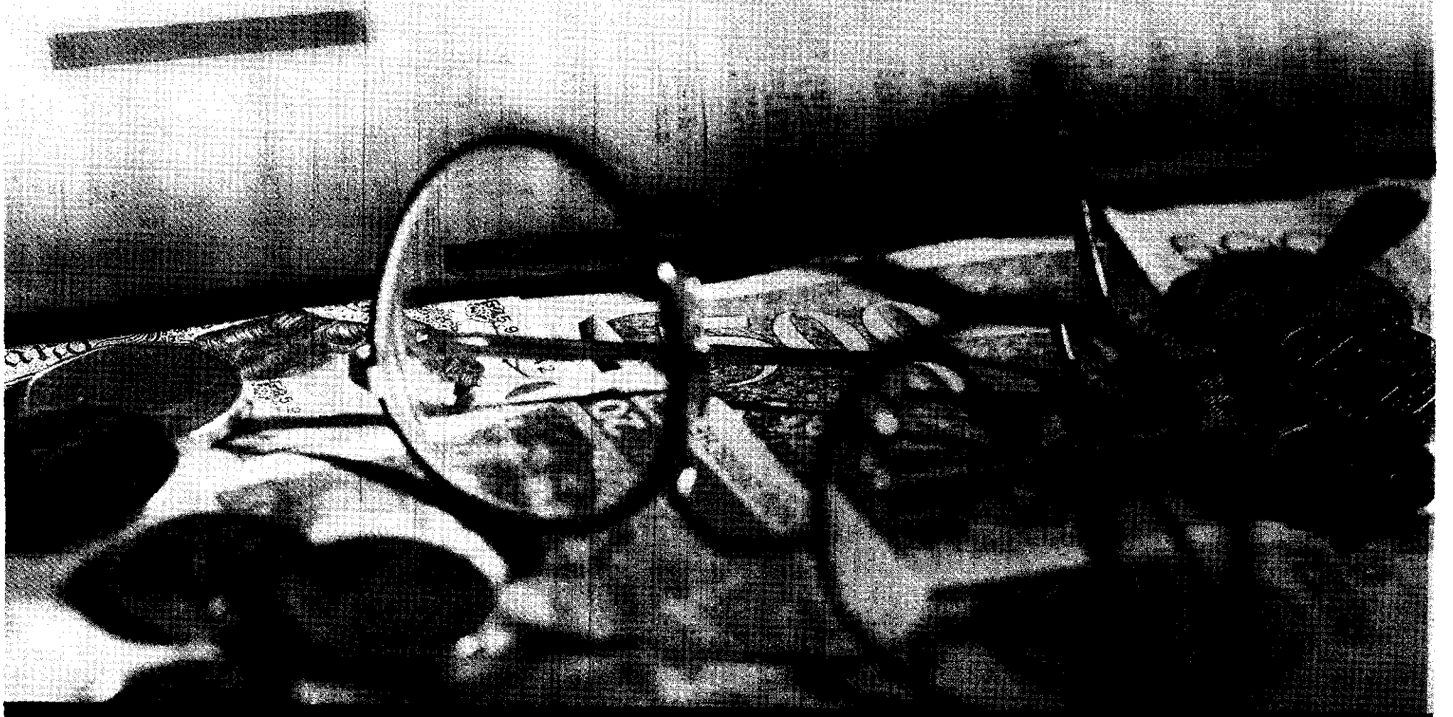

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have to testify about their sources or face jail time.

Fitzgerald thus got inside the official-source conversations that are a staple of life in Washington. And then he leveled perjury, obstruction-of-justice, and false-statement charges against Libby, based in large part on the accounts of the reporters who testified (if the charges are accurate, Libby appears to be the only person who disregarded the president's admonition to cooperate fully with Fitzgerald). That should be enough to make a lot of people, both reporters and sources, plenty nervous.

"I think that one of the big issues that has gotten lost here is the use of these waivers," says Tom Rosenstiel, a former *Los Angeles Times* reporter who now directs the Project for Excellence in Journalism. "They are potentially very dangerous and coercive, and I think the notion that a special prosecutor could come into an administration and insist that people sign these waivers is really chilling—and something that citizens should be very worried about."

Of course, Fitzgerald likely couldn't have gotten the waivers without the president's assent. Should Bush have refused to order his aides to sign? "As a journalist, frankly, I wish that he had," says Rosenstiel.

It's true that there is no absolute privilege for reporters that outweighs the needs of a criminal investigation—just ask the various journalists across the country who have gone to jail. Still, in the past prosecutors in Washington have been hesitant to force the issue. In fact, Justice Department guidelines direct prosecutors to exhaust all other sources of information before turning to reporters. Usually, that has meant staying away. But not for Fitzgerald.

"Journalists' privilege has been a paper tiger, and it was shown to be a paper tiger in this case," says Stanley Brand, a well-known Washington attorney who often defends high-profile Democrats. "All Fitzgerald did was really pursue what the law already entitled him to pursue. He was hard-nosed about that. A lot of prosecutors would step back from subpoenaing the press."

No doubt some of the president's supporters might be inclined to argue that at least some journalists got what they deserved. After all, it was the *New York Times* that on December 31, 2003, the day after Fitzgerald was appointed, published an editorial with the headline, "The Right Thing, at Last." The paper wrote approvingly that "after an egregiously long delay," the Bush administration had finally appointed a special counsel for the CIA-leak investigation.

As the probe dragged on, even some defenders of press prerogatives expressed frustration at seeing reporters, like Judith Miller, refusing to name their confidential sources. Geneva Overholser, formerly of the *Times* and the *Washington Post*, and now of the University of Missouri journalism school, argued that the "cardinal rule" of journalism—that one should never disclose the identity of a confidential source—was "neither as wise nor as ethical" in the CIA-leak case as it was in others. The reason? The leakers in the CIA case weren't really acting in the "public interest," as Overholser defined it.

But Fitzgerald plowed ahead. And now, in an area in which there was a certain amount of deference given to journalists, there might well be none. Is that really what the guiding lights of the press wanted? "I think the notion that some people have argued that this is a different kind of leak, that this was not a whistleblower's revealing something in the administration that was inappropriate or abuse, that this was high-ranking officials using confidentiality for political reasons to retaliate against a critic—that may be true," says Rosenstiel. "But I don't believe that it's okay for journalists, from a legal standpoint, to say, well, that's a different kind of leaking, I don't like that, so I'm released from my pledge of confidentiality."

That is where things now stand. And one thing is pretty easy to predict: Someday, the precedent established by the CIA-leak case will come back to haunt another administration—and another group of journalists—in some new, completely unrelated investigation. That's what happened when the old independent-counsel law, praised by Democrats when it was used against Ronald Reagan and George H. W. Bush, ended up nearly sinking Bill Clinton. And that is what will happen with the type of "special counsel" represented by Patrick Fitzgerald. In the long run, it might have been better if George W. Bush had not been quite so accommodating. NR

■ COVER STORY ■

Joe Wilson, Imbedded

His fibs have infiltrated the media, and the media should know better

STEPHEN SPRUIELL

Some journalistic frauds are big and explosive, like the Jayson Blair scandal. They make headlines and generate a lot of interest, but they do little harm outside the news organizations they affect. For instance, Blair's fabricated reporting on the D.C. sniper murders did not permanently corrupt the public's knowledge of the case. It was a big fraud with a big correction, after which everyone—except those of us who make a living writing about the media!—moved on.

Other journalistic frauds are more subtle—that is, the fraud occurs through the endless repetition of false information in the background paragraphs that supplement breaking news reports on a constantly developing story. These frauds are much more harmful to the public's knowledge of a particular incident than the big frauds, because the repetition of the false information gives it the appearance of fact.

As special counsel Patrick Fitzgerald's investigation into the disclosure of a CIA officer's identity has developed, national news organizations have allowed or perpetrated such a fraud. At issue is the officer's husband, former ambassador Joseph Wilson, whose criticism of the Bush administration's handling of pre-war intelligence led administration officials to leak his wife's CIA affiliation to the press. Several false tales that Wilson told as part of his criticism have become stock paragraphs in the background sections of stories about Fitzgerald's investigation.

These stories normally lead with the most current developments—lately, that's been the indictment of Vice President

Mr. Spruiell writes the media blog for National Review Online.

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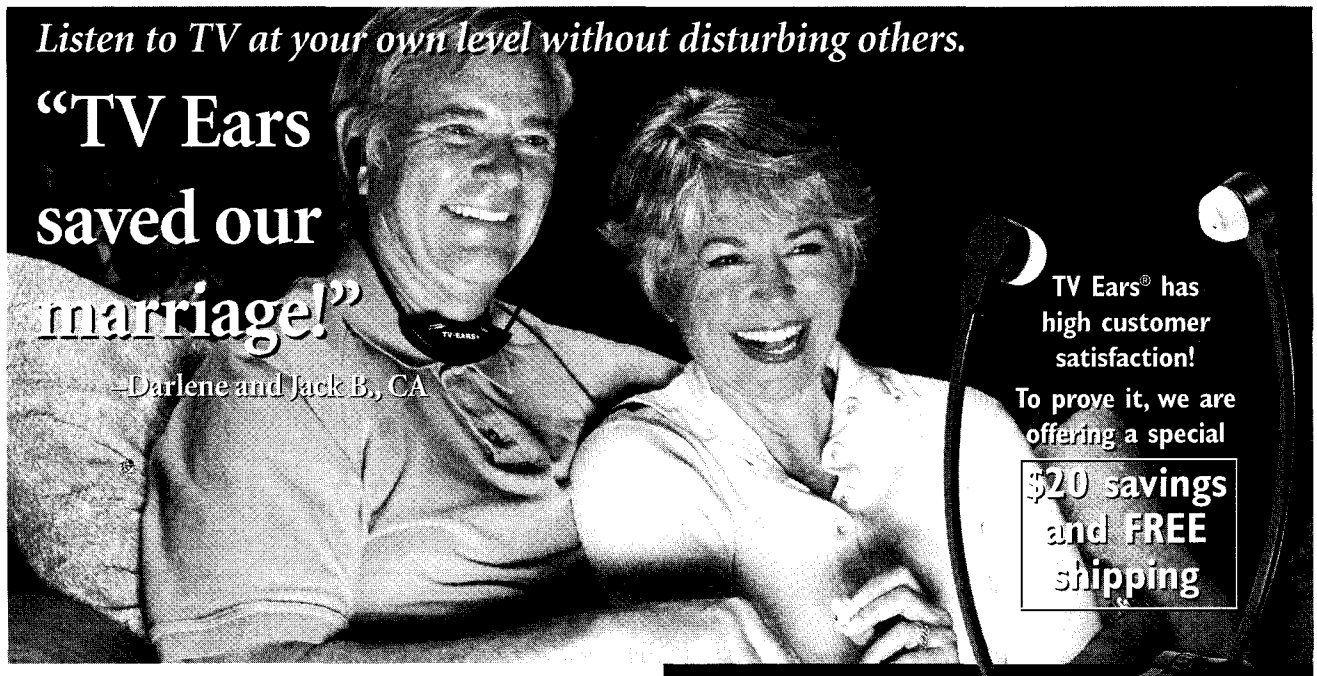

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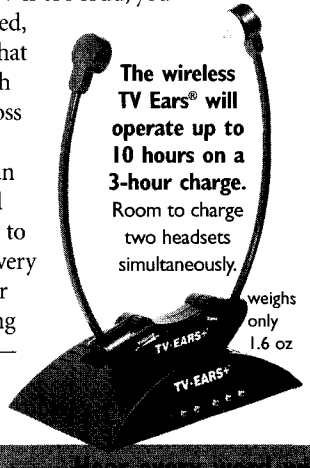

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Cheney's former chief of staff, I. Lewis Libby, for obstruction of justice and perjury. Then these stories include several background paragraphs to tell the reader unfamiliar with the case what it is all about.

This is what those paragraphs *should* say: After Cheney heard reports that Saddam Hussein had tried to buy uranium from Niger, he asked the CIA to check them out. This was in February 2002. Valerie Plame, who worked at the CIA, suggested her husband Joseph Wilson for the trip based on his experience as an ambassador in Africa. He reported back to the CIA that it was unlikely that Niger had ever agreed to sell uranium to Saddam. But he also reported that an Iraqi envoy had approached the prime minister of Niger in the late 1990s seeking "expanded commercial relations." The prime minister—by this point the former prime minister—told Wilson that he took this to mean the Iraqis wanted to purchase uranium: Niger's principal export. Because Iraq was under U.N. sanctions at the time, he turned the Iraqis down.

This report from Wilson matched British intelligence reports that Saddam had tried to buy uranium from Niger. Nevertheless, the CIA decided that Wilson's report didn't significantly add to the intelligence, and so they did not include anything from it in subsequent intelligence products. Nor was Cheney briefed on Wilson's findings.

In October 2002, the State Department discovered that the intelligence reports that had prompted Cheney's request were based on forged documents. The British intelligence reports, however, had nothing to do with the forgeries. They were based on Iraq's attempt to negotiate a uranium sale with Niger in the late 1990s, which Wilson had also reported.

By that point, many—but not all—in the U.S. intelligence community were convinced that Iraq had at least *attempted* to purchase uranium from Niger. In his 2003 State of the Union address, President Bush cited the British intelligence, stating, "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."

Shortly after the March 2003 invasion of Iraq—as teams searching for forbidden weapons in Iraq began to come up empty-handed—leaks started to seep out of the CIA accusing the White House of exaggerating the intelligence on WMD in Iraq. Against this backdrop, Joseph Wilson started making claims to the press that had no basis in fact.

Claim No. 1: In May 2003, Wilson began telling reporters that he knew that Saddam did not purchase uranium from Niger because the documents that occasioned his inquiry were forgeries. These reporters wrote that a "former ambassador" had reported the forged documents to the CIA after his trip in early 2002. But Wilson could not have known the documents were forged in early 2002. The United States did not receive them until late 2002—eight months after Wilson's trip. During an inquiry into pre-war intelligence, Wilson told the Senate Select Committee on Intelligence that he may have "misspoken." He has since said that he never claimed to have reported the forged documents to the CIA.

Claim No. 2: Wilson told these same journalists that his report had reached the vice president's office. That also turned out to be false. The CIA never briefed Cheney on Wilson's findings. The intelligence committee found that Wilson's assertion was nothing more than a claim based on an assumption.

Claim No. 3: After two months of leaking to the press, Wilson wrote a bylined op-ed in the *New York Times*. In "What I Didn't Find in Africa," Wilson said that President Bush's "sixteen words" about Iraq and Africa in the State of Union address "[were] not borne out by the facts as I understood them." He wrote that Saddam had not acquired uranium from Niger—true enough. But his op-ed did not mention his conversation with the former prime minister, who had told him that Iraq had *sought* to buy uranium from Niger. The findings of his trip did not contradict Bush at all.

Claim No. 4: After Robert Novak wrote a column identifying Plame as a CIA operative and reporting that Plame had suggested Wilson for the trip, Wilson loudly and frequently claimed that she had nothing to do with the matter. But the intelligence committee found a memo she wrote to her boss spelling out Wilson's qualifications for the trip and his contacts in the region. By any measure, she was involved in the decision to send Wilson.

After the intelligence committee's report on pre-war intelligence came out in July 2004, refuting all these claims with evidence, one would have been naïve to expect news organizations to undertake major efforts to correct the record. One could have hoped, however, that they would henceforth refrain from treating Wilson as a credible figure. Alas, many news organizations carried on as though the intelligence-committee report had never been written. Reporters in need of background material for new stories about Fitzgerald's investigation simply looked to old stories about Joseph Wilson. In distilling the essence of his role in the case, most chose to portray him as a heroic truthteller, with no mention of his history of fibbing to the press.

The indictment of Libby has thrust the Plame story back into the news, and nearly every story about a new development in the case contains a Wilson canard in the background. Take this paragraph from the October 24 *New York Times*:

"Mr. Fitzgerald has been focused on whether there was an illegal effort at the White House to undermine the credibility of Joseph C. Wilson IV, a former ambassador who became a critic of the administration's Iraq policy by his dismissive comments over the possibility that Baghdad had sought to buy uranium fuel from Niger."

But Wilson had *confirmed* that Baghdad had sought to buy uranium from Niger.

Or this paragraph from the October 25 *Washington Post*:

"Wilson's central assertion—disputing

Joe Wilson, hunting in Africa

ROMAN GENN

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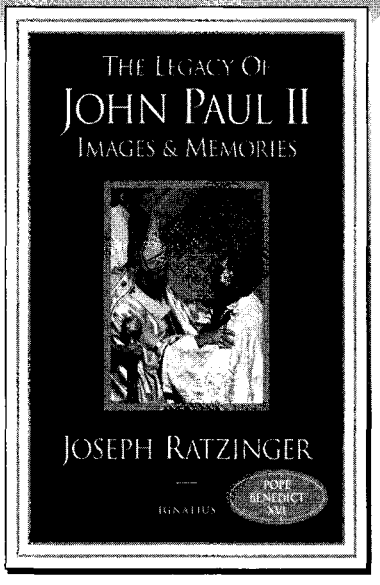

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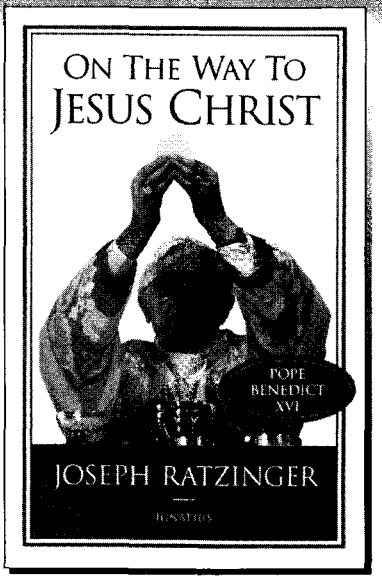

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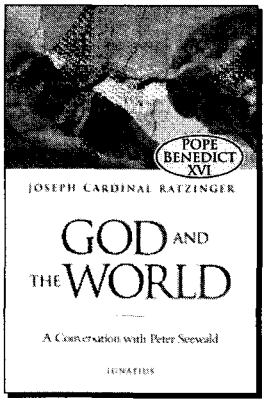

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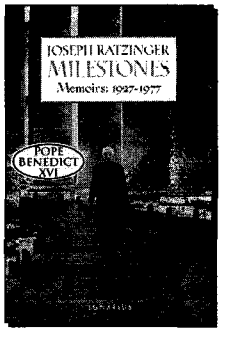

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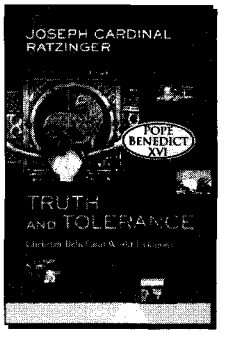

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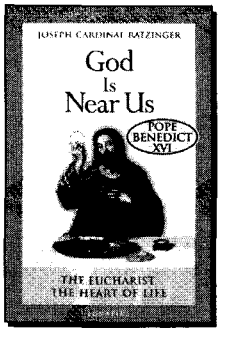

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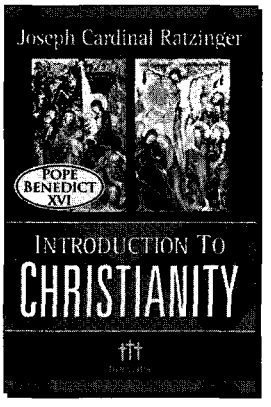

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President Bush's 2003 State of the Union claim that Iraq was seeking nuclear material in Niger—has been validated by post-war weapons inspections."

Again, incorrect. The British government continues to vouch for the intelligence report Bush cited in the 2003 State of the Union, declaring it "well-founded"—even though the White House tried to distance itself from the "sixteen words" after Wilson's op-ed (a significant blunder, because Wilson's op-ed did not actually contradict Bush's speech).

Or this paragraph from the October 27 *Seattle Post-Intelligencer*:

"Eight days later, in what Wilson and his supporters saw as raw personal payback, syndicated newspaper columnist Robert Novak published a column noting that he had been told by top administration officials that Wilson's wife, Valerie Plame, a CIA officer, may have played a major role in having Wilson sent to Niger."

But Wilson's wife *did* play a major role. She wrote in a memo to her boss that her husband had "good relations with both the PM [prime minister] and the former Minister of Mines (not to mention lots of French contacts), both of whom could possibly shed light on this sort of activity."

In the week leading up to Libby's indictment, at least ten items from major news organizations—ranging from those mentioned above to the Associated Press and CNN—contained false or misleading information based on Joseph Wilson's tales. Immediately after the indictment, Wilson himself launched a media offensive aimed at framing the indictment as his own vindication. Wilson wrote an op-ed for the *Los Angeles Times* and gave interviews to CBS and NBC. All three media outlets gave Wilson as much room as he needed to spin wild theories about White House cabals planning to destroy him, despite the fact that Fitzgerald did not charge anyone with crimes related to the leaking of his wife's identity to the press.

Bit by bit, Wilson's fabrications have become part of the narrative the press uses to explain the leak investigation, the Libby indictment, and the Iraq War itself. The press either doesn't care enough to correct the record or doesn't want to expose its own complicity in distorting it. Therefore, those who have the facts about Wilson must repeat them just as often as the press repeats the Wilson canards. **NR**

■ THE WHITE HOUSE

George W. Bush, Comeback Kid?

Some suggestions for how to do it

DAVID FRUM

THIS is a moment of opportunity for President Bush. With conservatives rallying to the president's superb choice of Samuel Alito for the Supreme Court—and with the worst of the CIA-leak investigation behind him—the way is open for the president to regain the initiative after a frustrating summer and fall.

Presidents can remain powerful and important to the very end of their term.

In his final three years in office, Ronald Reagan a) forced through a major tax reform cutting the top tax rate to 28 percent, b) faced down Mikhail Gorbachev in a dramatic series of summit meetings, c) oversaw a bounceback from the worst one-day plunge in stock prices in history, and d) signed into law the first new entitlement program since 1974 (a health-care plan that was happily repealed in 1989 before it went into effect).

President Clinton was no Ronald Reagan: Much of his final term was wasted in scandals of his own making. Yet he too presided over an otherwise positive final three years, including the Kosovo war, the expansion of NATO into Eastern Europe, and the successful navigation of the 1997–98 global financial crisis.

We can be sure that dramatic events await President Bush as well. And while the faults of this president and the weaknesses in his administration have been unflatteringly highlighted in recent months, in the days ahead Americans will surely also be reminded of his strengths and merits.

But the president does not have to await events. There are things he can do right now to regain the initiative and reassert his mastery. Here are five suggestions for immediate action:

One: *Get hiring.* One good hire—Samuel Alito—has changed the mood in Washington from overcast to sunny. Just imagine what four or five more good hires could do, starting with the most pressing need of all: a powerful and admired secretary of the Treasury.

"Personnel is policy" is a saying from the Reagan days that George W. Bush has ignored to his cost. The president has surrounded himself with a small circle of trusted aides and advisers, and then beyond that, taken a remarkably casual attitude toward staffing the administration as a whole. While many of those hired have proven themselves solid and effective conservatives, many others seem animated by the spirit of the Bush 41 administration. ("Our people don't have ideologies," goes one famous line from those days. "They have mortgages.")

This belief-blind attitude toward staffing is one reason for the weird gap that has again and again opened between the president's bold words and his administration's business-as-usual performance on issues ranging from homeland security to health-care reform. While the Bush personnel office cares intensely that a job candidate worked to help elect or reelect George W. Bush, they do not seem to care much whether the job candidate actually agrees with the policies George W. Bush got elected and reelected to execute.

Right now it seems that half of official Washington is urging the president to cashier Karl Rove. This is crazy: Rove is performing. The aides the president should be replacing are those who are *not* performing. And maybe he should start with the aides who are hiring the aides.

Two: *Rediscover moral clarity.* The president of Iran has just threatened to annihilate Israel as soon as he completes his nukes program. Alarming, no? Back in 2002, President Bush pledged to prevent the world's most dangerous regimes from acquiring the world's deadliest weapons.

Mr. Frum, a contributing editor of NATIONAL REVIEW, is the author of *The Right Man: The Surprise Presidency of George W. Bush* and (with Richard Perle) *An End to Evil: How to Win the War on Terror.*

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That commitment seems now to have fallen by the wayside.

What is the Bush administration's North Korea policy? What is its Iran policy? Nobody seems to know. A conveniently timed leak tells us that Iran may still be years away from completing a bomb—so don't worry. A meaningless exchange of notes with North Korea is promoted as a dramatic diplomatic breakthrough.

Yes, the difficulties in Iraq have limited to some extent the administration's freedom of action. But Iraq alone does not seem to explain the policy breakdown. It is as if the administration has lost sight of its original pledges and its own criteria for success. But if this administration leaves office with Iran and North Korea still trundling toward nuclear-power status, the administration will have failed—no matter how many negotiating rounds it worked through. It's time to recollect what it was that the Bush administration went to Washington to do.

Three: *Re-energize.* Rising gasoline prices translate into falling poll numbers. Add surging bills for home heating this winter, and . . . well, 2006 starts looking like a very tough year for incumbents. The Bush administration devised and Congress has enacted energy reforms, some of them genuinely helpful, others more symbolic. The plan was intended to increase domestic energy production, especially oil and gas production. The plan's authors hoped that if more of America's energy originated in this country—or at least from within this hemisphere—the United States would be less vulnerable to supply shocks.

This plan, however, offered scant help to energy consumers. The price of oil and gas is set by international markets. Consumers care little whether their $3-a-gallon gasoline comes from Nigeria or Texas. They want cheap energy, not domestic energy. And over the past five years, energy has become steadily more costly, with no relief in sight.

In 2001 and 2002, the president courageously championed nuclear power as the long-term solution to the energy problem. Nuclear power is environmentally more benign than coal-fired electricity, and could be abundant and cheap enough someday to help hydrogen cars or other alternative motor fuels become a reality. Yet in half a decade, the U.S. has made little progress toward building new nuclear plants. Promoting nuclear power offers the president a way to identify himself with both national-security and consumer concerns, in ways that honor his own personal convictions. Time to go back to work on this subject.

Four: *Look over the horizon.* Starting from a weak political position in 2001, President Bush was often forced in his first term to deviate from his long-term principles for short-term survival: steel tariffs, the repeal of the farm reforms of the 1990s, signing McCain-Feingold, prescription drugs—the list goes on. Now that he is a reelected president, the only

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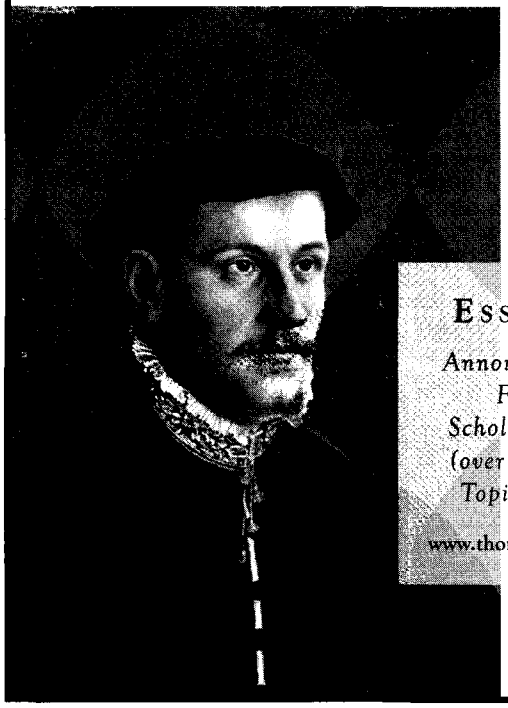

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term he need care about is the long term. Yet the bill for those short-term concessions is now beginning to arrive. The prescription-drug plan is scheduled to go into effect next year. The costs will prove horrific. At the same time, the administration should brace itself against the disappointment and anger of seniors who are about to discover that it delivers less than many of them had hoped or expected.

As far as I can tell, almost nobody in the administration is preparing now to cope with this problem—which means that when it arrives it will jolt the administration as abruptly and unexpectedly as this summer's hurricanes.

To keep control of the agenda, the administration and Congress need to act now to anticipate trouble next year—including preparing proposals to reform the prescription-drug plan so as to control its costs. President Reagan's health entitlement was abolished almost as soon as it went into effect. It is not impossible that something like that could happen with George W. Bush's drug benefit. If it did, a multi-trillion-dollar unfunded liability would suddenly vanish from the account books of the United States. That has to be bullish, right? And if the stock market is languishing next year, bullish news will surely be welcomed by many congressional voters.

LEGACY

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Five: *Return to Iraq.* The administration sometimes seems to give the impression that it hopes that if it does not talk about Iraq, the voters won't think about Iraq. But Iraq is always there, in the background, troubling American minds, influencing voters' perceptions. The administration's curious unwillingness to talk in specific and convincing ways about the good news from Iraq creates political opportunities for its opponents to present the war as unremittingly catastrophic.

The Iraq war *is* the Bush administration. If Americans come to believe that the war was a costly and unnecessary mistake, that will be their verdict on George W. Bush too. The war won't speak for itself. The president has to defend, champion, and explain the war—or else be destroyed by it.

He has a story to tell. The troops in Iraq are motivated and committed. They believe in the mission. More and more Iraqis are now joining the fight, upward of 80 battalions of troops in the top three grades of readiness. As Michael Ledeen has argued on National Review Online, intercepted communications from Ayman al-Zawahiri to Musab al-Zarqawi paint a picture of an insurgency in extreme distress. And the trial of Saddam Hussein reminds Iraq, the Middle East, and the world of the nature of the enemy in this conflict.

Perhaps the president should consider a return visit to Iraq. Failing that, the administration has to find ways to highlight the positive news that Central Command collects and fires into the ether every day. (You can read it yourself at www.centcom.mil.)

The great enduring mystery about the Bush administration has been the strange disparity between the boldness of the president's strategies and the extreme caution of his tactics; between the strength of his goals and the weakness of his methods; between the stirring eloquence of his major statements and the feeble uncertainty of the administration's day-to-day communications. It's the magnificent asset side of the ledger that sustains the administration's friends; it's the troubling debits that embolden its enemies. If this presidency is to live up to the nation's best hopes, it must find some way—and fast—to balance its political bookkeeping. **NR**

■ THE SUPREME COURT

Introducing Sam Alito . . .

. . . and a generation of conservative legal talent

JOHN H. HINDERAKER & SCOTT W. JOHNSON

WHEN the White House nominated Harriet Miers to the Supreme Court, it appeared to many conservatives that it had drawn the wrong conclusion from the smashing success it had achieved with the nomination of John Roberts. The White House seemed to have concluded that its success was owing to the number of key points on which the Democrats could not fix Judge Roberts—a kind of negative capability (to misuse Keats's phrase) that he had maintained despite the length and breadth of his distinguished career. Harriet Miers exceeded Judge Roberts in negative capability. Her negative capability, however, was unadorned by any explicit signs of devotion to constitutionalism or conservative principle. In due course the president withdrew her nomination and replaced her with the anti-Miers, Third Circuit judge Samuel Alito Jr.

Alito's nomination to the Court marks an epochal moment. Despite the presence of seven Republican appointees on the Court, its usurpation of power from the elected branches and from the states has continued more or less unabated since the 1960s. Richard Nixon's four appointees barely retarded the Court's transformation into the most dangerous branch: Lewis Powell, for example, voted with the *Roe* majority and was the author of the mischievous controlling opinion in the *Bakke* case that has so damaged the ideal of a colorblind society. Ronald Reagan appointed Anthony Kennedy and Sandra

Messrs. Hinderaker and Johnson are Minneapolis attorneys and contributors to the weblog Power Line (powerlineblog.com).

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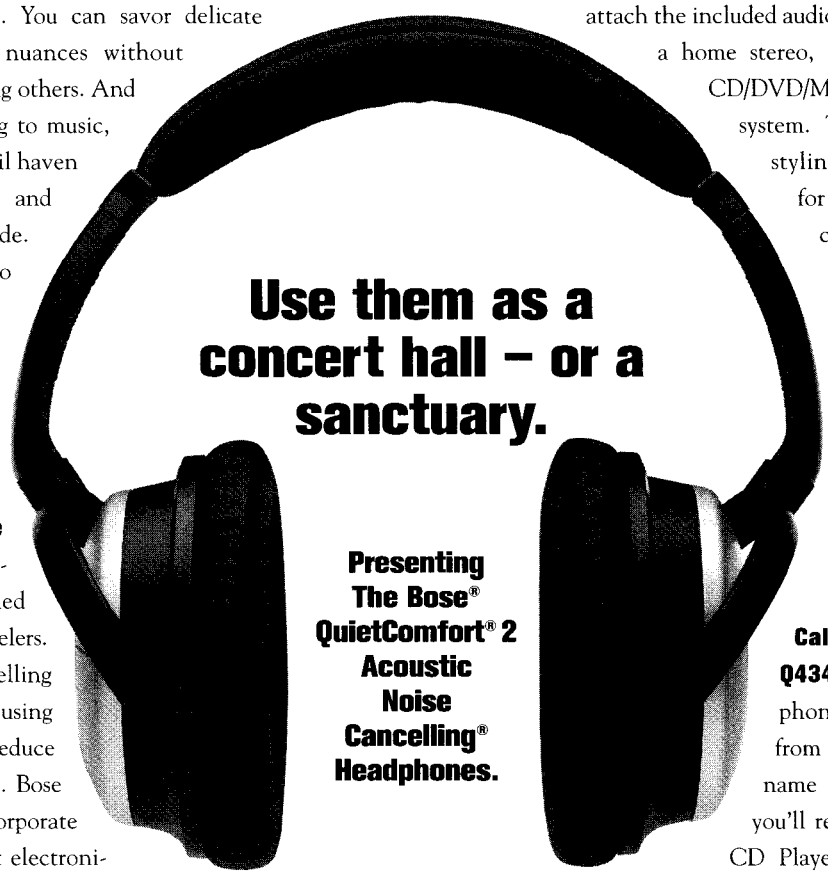

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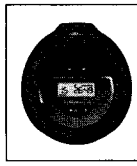

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Day O'Connor, who extended the encroachments of the Warren Court.

There is a good explanation for why, until now, Republican appointments have so often been disappointing to conservatives. The revolt against activist liberal judges was populist, and the legal profession was generally hostile to it. In the early years of the conservative revolt, the profession simply didn't offer much in the way of a talent pool from which originalist jurists, primed to reject government by judiciary and reclaim the Constitution as the charter of limited government, could be drawn.

Thankfully, times have changed; and the Federalist Society deserves a great deal of the credit. Founded in 1982, the Federalist Society has been a forceful advocate for the proposition that it is "the province and duty of the judiciary to say what the law is, not what it should be." The Society has provided a forum for lawyers from all walks of the profession and of all persuasions to debate issues of law and public policy. Among the federal appellate judges who have participated in Federalist Society forums are D.C. Circuit judges A. Raymond Randolph and David Sentelle, Fourth Circuit judge J. Harvie Wilkinson III, Fifth Circuit judge Edith Jones, Seventh Circuit judge Frank Easterbrook, Eighth Circuit judge Pasco Bowman, Ninth Circuit judges Alex Kozinski and Diarmuid O'Scannlain, and, yes, Third Circuit judge Sam Alito.

Over the past 20 years, Republican presidents have populated the lower federal courts with these and many other highly credentialed conservative lawyers. How much they could accomplish in those positions has been limited, however, by the fact that District Court and Court of Appeals judges are bound to follow the precedents laid down by the Supreme Court.

A good example is Alito's dissent in *Planned Parenthood* v. *Casey*, the opinion that has most often been attacked by Alito's liberal critics. The issue in *Casey* was the constitutionality of a Pennsylvania statute that placed certain restrictions on abortions, including a requirement that wives, in most cases, notify their husbands before getting an abortion. The Third Circuit majority upheld most aspects of the challenged statute, but held the requirement of spousal notice unconstitutional (a view that was ultimately upheld by the Supreme Court); Judge Alito dissented on that issue.

Abortion opponents may be disappointed by Alito's technical and dispassionate dissent. The issue on which he differed with his colleagues was whether the notification requirement constituted an "undue burden" on the right to abortion, under the Supreme Court's jurisprudence as it then existed. The opinion conveys no hint of Alito's own views on the topic of abortion, or even of his opinion as to how (if at all) the Constitution should bear on the subject of abortion. Rather, and somewhat ironically, his dissent is an effort to follow the twists and turns of Justice O'Connor's various opinions on "undue burden," and apply them to the record before him. The most one can fairly say is that Judge Alito's dissent in *Casey* does not evince any reflexive hostility to restrictions on abortion, and does reflect the vagaries of Justice O'Connor's previous (controlling) deliberation over "undue burdens" on the right to abortion. It also reflects what most conservatives regard as an appropriate deference to the legislature's role as arbiter of public policy.

The new man

WENN PHOTOS

A circuit-court judge, like a district-court judge, takes Supreme Court jurisprudence as he finds it. His opinion as to whether Supreme Court rulings are right or wrong is entirely immaterial. His duty is to apply the relevant Supreme Court decisions to the case before him, as best he can. This changes once a judge is appointed to the Supreme Court. As a Supreme Court justice, he is entitled to follow his own views on the proper interpretation of the Constitution and of federal statutes. He is not bound to follow the Court's past rulings as an appeals-court judge is; instead, he is constrained only by the looser concept of *stare decisis*, the doctrine that an issue, once decided, should ordinarily not be revisited. *Stare decisis* is a doctrine that, in principle, is approved of by both liberals and conservatives (historically, more so by conservatives).

But everyone agrees there are occasions when the Court should deviate from the usual rule of fidelity to its past decisions. The Court does, and should, overrule itself when it becomes convinced that an important issue has been wrongly decided. Where liberals and conservatives disagree is not on this principle, but on its application; they have different lists of "wrongly decided" cases. During Judge Alito's confirmation hearing, Democratic senators will ask for his views on *stare decisis* and try to lead him to pledge fealty to bulwarks of liberal jurisprudence like *Roe* v. *Wade*. But the liberals' enthusiasm for *stare decisis* is selective. In 2003, the Supreme Court held in *Lawrence* v. *Texas* that there is a constitutional right to commit acts of homosexual sodomy. In so ruling, the Court overturned *Bowers* v. *Hardwick*, which had held the opposite. And *Bowers* was not ancient history; it was decided in 1986. If any liberal objected to *Lawrence* on the ground of *stare decisis*, we missed it.

The Alito nomination, together with John Roberts's accession to the post of chief justice, marks a generational changing of the guard. The talented, principled conservatives who began their legal careers in the aftermath of the Warren Court have served their apprenticeships in the executive branch, in private practice, and on the lower federal courts. In those positions, their influence has been real but limited. But now, the moment that rank-and-file conservatives have awaited since the Nixon administration is at hand: A Republican president has a deep roster of talented and highly qualified conservatives on which he can draw in making Supreme Court nominations.

There is every reason to believe that Samuel Alito will prove the kind of Supreme Court justice that Republican presidents have promised, but rarely delivered, since 1969, and that the Court will shift in a more conservative direction as a result. **NR**

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If you *have* pondered issues like these, you are not alone. More than a half-century after the Axis powers surrendered, these and other questions linger. They are the haunting postscripts of what is still called "the last good war"—the most monumental and influential conflict in human history... and a subject that still fascinates us as fresh research invigorates and expands it.

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Flag Raising on Iwo Jima, 1945.

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Thomas Childers (University of Pennsylvania) is one of the world's most renowned scholars of both modern German history and the Second World War, and a frequent lecturer on those subjects throughout the U.S. and Europe. Professor Childers has written or edited several books, including a trilogy on World War II that he is currently completing. Pulitzer Prize-winning *Washington Post* book critic Jonathan Yardley has described the first volume, *Wings of Morning*, as a "powerful and unselfconsciously beautiful book."

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■ ABROAD

On Top Down Under

The dazzling and purposeful career of Australia's John Howard

JOHN O'SULLIVAN

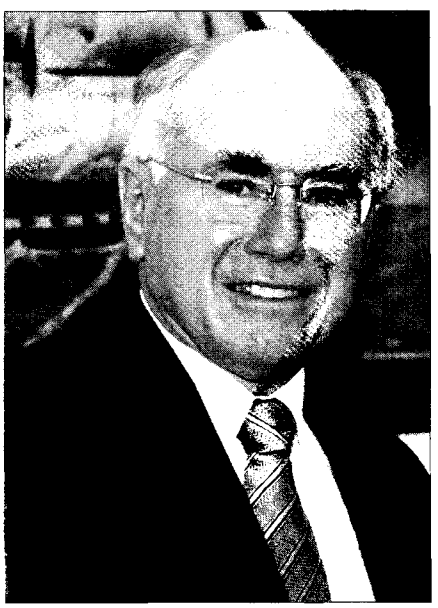
Melbourne, Australia

OCTOBER's cover of *The Bulletin*, Australia's version of *Newsweek*, said it all: a relaxed and confident Prime Minister John Howard sprawled above the caption "Mr. 57 Per Cent—Why On Earth Does This Man Still Bother?" Tucked under his left hand was the *Bulletin* cover of 17 years ago on which a younger and more anxious Howard was asked by the headline, "Mr. 18 Per Cent—Why On Earth Does This Man Bother?"

When the first cover appeared, Howard was just about to lose his leadership of the (conservative) Liberal party to a palace coup, largely because he was scoring so miserably in the opinion polls. He spent most of the next decade in opposition under other party leaders, thinking through a reform program few thought he would ever implement. He finally became prime minister in 1996. He has won four general elections in all. Though he is widely expected to retire sometime next year, handing over power to the longtime crown prince, Treasurer (i.e., Finance Minister) Peter Costello, no one would be surprised if he were to try for a fifth election victory.

Howard dominates Australian politics more thoroughly than any Aussie prime minister since the famously sarcastic Robert Menzies. He is hated by the cultural-cum-media Left of Melbourne and Sydney, but popular with most Australians and completely trusted by the Liberal party faithful. He is the reason many blue-collar workers abandoned the Labor party and, like Reagan Democrats, chose conservative social values over short-term economic self-interest. As a leading Liberal strategist said to me last year: "English-speaking countries tend to have both a conservative party and a conservative movement. You lose elections when the party and movement split. John Howard is the leader of both the party and the movement." In other words, he maximizes the conservative vote in Australia. That "Mr. 57 Per Cent" refers to the percentage of Aussies who prefer Howard as prime minister to his Labor opponent, Kim Beazley.

This electoral achievement is all the more remarkable because it has been built on pursuing controversial policies and passing tough reforms. Indeed, Australia has been on an austere regime of economic reform under both parties since the mid-1980s. It was badly needed,



The PM

because "the Lucky Country" was then one of the most protected, cosseted, subsidized, and so distorted economies in the world. Unemployment in 1983 was at its highest point since the 1930s. Inflation and interest rates were high, the federal budget mired in deficit. In short order, tariff protectionism, financial controls, labor regulations, and tax policy were all dismantled and/or overhauled. Howard himself pushed through a major tax package, cutting the income tax and replacing lost revenue with an indirect goods-and-services tax. It was bitterly unpopular at the time. Howard almost lost power over it. But he persevered and the reform went through.

Taken together these reforms have produced an astonishing rebirth of the Australian economy, today in its 15th year of economic expansion. Though ranked only 53rd in terms of population, Australia is the world's 13th largest economy and its eighth in per capita living standards. (Two decades ago it was 18th in living standards.) Howard's former campaign manager, Lynton Crosby, writing recently in the London *Sunday Telegraph*, gave vent to a great cry of Aussie triumphalism:

"Australia's net debt position has fallen from 20 percent of GDP to 1.3 percent. And within a year, Australia will have no net government debt at all. Read that again: no debt. Down from $96 billion to zero in a decade. The tax system was reformed through the introduction of a goods and services tax—your VAT—with offsetting cuts in income and other taxes. This reduced taxes on exporters and job creators. The burden on the private sector fell, helping it to create more jobs—more than 1.5 million new jobs since 1996 alone. Not bad for a country of just 20 million people. Today, unemployment is at a 30-year low."

Yea, verily. But what doth it profit a man to gain the whole world and still lose the Ashes? (Cricket joke; U.S. subscribers, please ignore.)

Not that Howard is resting on his laurels. Since being reelected in 2004 he has privatized the telecommunications giant, Telstra, and his government is just about to present a second major reform to make employment contracts and the labor market more flexible. Like earlier reforms, this is unpopular. The Labor party and the unions are attacking it as contrary to Australia's long tradition of highly regulated union–employer relations. And there are signs of a Labor recovery in the polls.

Nor is that Howard's only little legislative difficulty. He is bringing in new anti-terrorist laws that, like the Patriot Act in America and Tony Blair's proposed measures in Britain, are under attack as abolishing civil liberties, ancient and modern. Howard is safe in parliamentary terms since the official Labor opposition supports the legislation in principle (partly because it is popular) and since the (Labor) premiers of most states have had a hand in shaping it. But the legal and media

MANDEL NGAN/AFP

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Arabian Fables (I)

How the Arabs soften up world opinion with fanciful myths.

Josef Goebbels, the infamous propaganda minister of the Nazis, had it right. Just tell people big lies often enough and they will believe them. The Arabs have learned that lesson well. They have swayed world opinion by endlessly repeating myths and lies that have no basis in fact.

What are some of these myths?

The "Palestinians." That is the fundamental myth. The reality is that the concept of "Palestinians" is one that did not exist until about 1948, when the Arab inhabitants of what until then was Palestine, wished to differentiate themselves from the Jews. Until then, the Jews were the Palestinians. There was the Palestinian Brigade of Jewish volunteers in the British World War II Army (at a time when the Palestinian Arabs were in Berlin hatching plans with Adolf Hitler for world conquest and how to kill all the Jews); there was the Palestinian Symphony Orches- tra (all Jews, of course); there was *The Palestine Post*, and so much more.

> "The web of lies and myths that the Arab propaganda machine has created plays an important role in the unrelenting quest to destroy the State of Israel. What a shame that the world has accepted most of it!"

The Arabs, who now call themselves "Palestinians," do so in order to persuade a misinformed world that they are a distinct nationality and that "Palestine" is their ancestral homeland. But, of course, they are no distinct nationality at all. They are entirely the same — in language, customs, and tribal ties — as the Arabs of Syria, Jordan, and beyond. There is no more difference between the "Palestinians" and the other Arabs of those countries than there is between, say, the citizens of Minnesota and of Wisconsin.

What's more, many of the "Palestinians," or their immediate ancestors, came to the area attracted by the prosperity created by the Jews, in what previously had been pretty much of a wasteland.

The nationhood of the "Palestinians" is a myth.

The "West Bank." Again, this is a concept that did not exist until 1948, when the army of the Kingdom of Transjordan, together with five other Arab armies, invaded the Jewish state of Israel, on the very day of its creation.

In what can almost be described as a Biblical miracle, the ragtag Jewish forces defeated the combined Arab might. But Transjordan stayed in possession of the territories of Judea and Samaria and part of the city of Jerusalem. The Jordanians promptly expelled all Jews from the area that they occupied, destroyed all Jewish institutions and houses of worship, used Jewish cemetery headstones to build military latrines, and renamed as "West Bank" what had been Judea and Samaria since time immemorial.

The attempt, quite successful, was to persuade an uninformed world that these territories were ancestral parts of the Jordanian Arab Kingdom (itself a very recent creation of British power diplomacy). Even after the total rout of the Arabs in the 1967 Six-Day War, in which the Jordanians were driven out of Judea/Samaria and of Jerusalem, they and the world continued to call this territory the "West Bank", a geographical concept that cannot be found on any except the most recent maps.

The concept of the "West Bank" is a myth.

The "Occupied Territories." After the victorious Six-Day War, during which the Israeli army defeated the same cabal of Arabs that had invaded the country in 1948, Israel remained in possession of Judea/Samaria (now renamed "West Bank"), which the Jordanians had illegally occupied for 19 years; of the Gaza strip, which had been occupied by the Egyptians but which (hundreds of miles from Egypt proper) had never been part of their country; and of the Golan Heights, a plateau of about 400 square miles, which, though originally part of Palestine, had been ceded to Syria by British-French agreement.

The last sovereign in Judea/Samaria and in Gaza was the British mandatory power — and before it was the Ottoman Empire. All of Palestine, including what is now the Kingdom of Jordan, was, by the Balfour Declaration, destined to be the Jewish National Home. How then could the Israelis be "occupiers" in their own territory? Who would be the sovereign and who the rightful inhabitants?

The concept of "occupied territories" in reference to Judea/Samaria and Gaza is a myth created by Arab propaganda.

Unable so far to destroy Israel on the battlefield — though they are feverishly preparing for their next assault — the Arabs are now trying to overcome and destroy Israel by their acknowledged "policy of stages". That policy is to get as much land as possible carved out of Israel "by peaceful and diplomatic" means, so as to make Israel indefensible and softened up for the final assault. The web of lies and myths that the Arab propaganda machine has created plays an important role in the unrelenting quest to destroy the State of Israel. What a shame that the world has accepted most of it!

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Left are out for his blood, depicting the laws as totalitarian and outside the tradition of Anglo-American constitutionalism.

That was an argument advanced at a recent Melbourne "Conversazione" on judicial activism, where supporters of greater judicial authority argued that Australia should follow Britain's recent example and bring in a Bill of Rights that would give judges an effective veto over legislation they dislike. British commentator Melanie Phillips was on hand to argue, very forcefully, that, in Britain, this greater judicial power was being used to gut and weaken anti-terrorist actions that the people wanted.

But that may be the point: Australia's cultural Left now looks favorably on anti-democratic constitutional mechanisms. You can see why. It has been out of power for over a decade, dislikes the general direction of government policy, is especially hostile to the Iraq War, and would like to shift Australia on a new foreign-policy course that it senses most Aussies don't want. This is no problem for Howard. Whenever the cultural Left attacks him on any issue, the voters say: "Hey, we agree with Little John on this." It is, however, a problem for Labor. Its last leader, Mark Latham, was himself a cultural leftist who confided to his now published diaries that he thought the U.S. alliance (which he publicly endorsed) was the last vestige of the White Australia policy. Latham was the polar opposite of Howard—he was the leader of both the Left party and the Left movement. Not surprisingly, he led his party to a massive defeat. His successor, Kim Beazley, is both more pragmatic and more shrewd—he has criticized the anti-terrorist laws as too lenient! And last week he made a speech to a religious group affirming his personal Christian faith, the importance of belief in politics, and, specifically, his and Labor's opposition to gay marriage.

Like Thatcher in the U.K., Howard may find that his last great reform is his reform of the opposition Labor party, as it realistically accepts the other changes in Australian life that he has wrought. As in the U.K., however, that reform would make Labor more electable. Which will be a problem for someone—Howard himself or, if Howard retires, his patient and perhaps less lucky successor, Peter Costello. **NR**

■ CAPITOL HILL

The Doctor Is In—or Out?

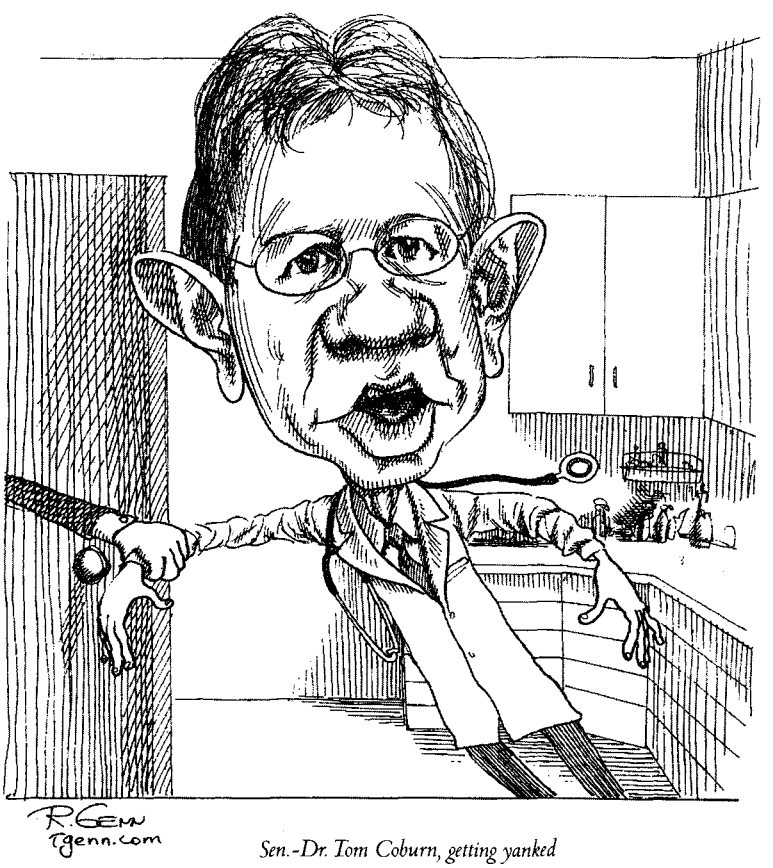
The case of Sen. Tom Coburn, (would-be) citizen-legislator

KATE O'BEIRNE

TOM COBURN, the obstetrician and Republican senator from Oklahoma, is still in the beginning of his first term. But he has already launched an unprecedented attack on his colleagues' pet pork projects, and is preparing to mount a challenge to an Ethics Committee that, rejecting the idea of the citizen-legislator, has forbidden him to continue treating some of his patients. In fighting these battles, the good doctor is tackling a chronic condition. His campaign against pork, privilege, and preening is a threat to the established order, and the chamber's old bulls are determined to tame the maverick in their midst before he can cure the Senate's sclerosis.

In late October, Coburn mounted an assault on the Senate's most highly prized prerogative: the allocation of pork spending. This year's transportation bill, with some 6,300 "earmarks" for pet projects at a cost of $22 billion, presented plenty of targets for the cost-cutting crusader. Most prominent among them was Alaska's infamous "bridge to nowhere," meant to replace a ferry connecting Ketchikan (pop. 8,000) with Gravina Island (pop. 50). (On Alaska's pork spending, see Stephen Spruiell's "No One Beats Alaska" in the November 7, 2005, issue of NR.) If built, it would be longer than the Golden Gate bridge and cost some $223 million—enough, Coburn has noted, to buy every resident of Gravina Island a Lear jet. Coburn proposed an amendment that would have instead used those funds to cover the costs of repairing the Twin Spans bridge in New Orleans.

In what the *Washington Post* called "the senatorial version of a hissy fit," Alaska senator Ted Stevens angrily vowed to become a "wounded bull on the floor of this Senate," and warned his colleagues that he would "be taken out



Sen.-Dr. Tom Coburn, getting yanked

ROMAN GENN

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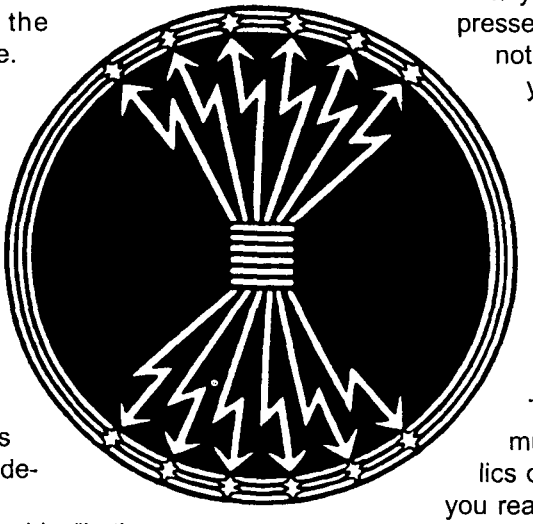
HIGH-VOLTAGE Catholicism

You've heard the saying, "If you can't say something nice, don't say anything at all." In other words, if you can't say something nice, refrain from speaking the truth. Apparently, the Blessed Virgin Mary didn't give Jesus such advice. He said some pretty nasty things to the Pharisees — and they were all true.

A "nice" person never feels outraged at shameless behavior. A nice person would never get angry and throw the moneychangers out of the temple. In the sex scandals in the Church, most bishops chose to be nice. A nice person takes the path of least resistance and commits the Deadly Sin of Sloth.



You've heard the sanctimonious catch phrase, "Let's not demonize, let's dialogue." But Jesus did not dialogue with His opponents. Indeed, He called the Pharisees "sons of Hell" (Mt. 23:15). That's demonizing to the max.

You've heard the pious bromide, "Let's heal the divisions in the Church." But you can't reconcile the irreconcilable. Indeed, Jesus said, "Do you suppose that I came to give peace on earth? I tell you, not at all, but rather division" (Lk. 12:51). Recalling the Benedictine motto, Pope Benedict XVI said, "Pruned, it grows again." The heretics, dissenters, and perverts need to be "pruned" from the Church, so she can grow again, so she can be united *in truth*.

We at the NEW OXFORD REVIEW, an orthodox Catholic monthly magazine, speak the truth, even if it isn't "nice," even if it's perceived as "uncharitable" by the hypersensitive.

Newsweek has called us "cheeky," and we are. Among those who've written for us are Walker Percy, Alice von Hildebrand, Tom Bethell, and Michael S. Rose (whose book *Goodbye, Good Men* exposed the homosexual rot in many of our seminaries).

If you're easily offended or depressed, if you're a Pollyanna, if you're not strong in your Catholic Faith, you should *not* subscribe to the NEW OXFORD REVIEW, because we do *not* turn a blind eye to sloppy thinking, screwy theologizing, financial shenanigans, and sexual debauchery in the Church — even among orthodox Catholics. We realize that certain delicate souls, as T.S. Eliot said, can't handle too much reality, that certain Catholics can only exist on cloud nine. If you really need opium, as Marx said, the NEW OXFORD REVIEW is *not* for you.

On the other hand, if you're tired of superficial nonsense and sweet nothings, and want real hope, consider the words of St. Augustine: "Hope has two beautiful daughters. Their names are anger and courage; anger at the way things are, and courage to see that they do not remain the way they are."

If you're ready for a Catholic magazine with "attitude" (which is how Karl Keating describes us), if you want a high-voltage Catholicism, you've got to subscribe.

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of here on a stretcher" if they backed Coburn's proposal. He even threatened to resign from the Senate if the boondoggle bridge were defunded. Apparently believing that he was bolstering his case by repeatedly noting the decades he has spent in the Senate, Stevens declared: "This is not the Senate I devoted 37 years to"; and, "That is not equality, and is not treating my state the way I have seen it treated for 37 years"; and, "I made a statement earlier today that in my 37 years I have never seen this." In the end, the Senate deferred to Stevens's longevity—and to his reputation as an Appropriations Committee chairman with a very long memory. The Coburn amendment failed on an 82–15 vote.

But even if Coburn lost the amendment, he won the argument. Stevens's tirade focused attention on the Senate's self-interested spending habits: The showdown was front-page news, and Coburn won accolades from editorialists across the country. The "bridge to nowhere" became the most famous bridge in America.

By insisting that the senators' right to tap the Treasury for political gain be treated as sacrosanct, Ted Stevens has defended the ultimate conflict of interest among political officials. But, ironically, it's Senator Coburn who stands accused of a conflict of interest by the Senate Ethics Committee. Here too he threatens the established order.

"Dr. Tom Coburn's office" is the phone greeting you hear if you call the senator's staff in Washington. Most Mondays, when votes aren't scheduled, Coburn can be found back home in Muskogee, Okla., seeing his patients. You'd think that, given Coburn's habit of spotting and condemning wasteful spending, his colleagues wouldn't want him to spend any more time in the Capitol than necessary. But the Senate's ethics watchdogs have demanded that he stop practicing medicine in order to devote his full attention to Senate business.

Some senators spend more time fundraising or playing golf than Dr. Coburn does seeing patients.

When Coburn served in the House of Representatives, the House Ethics Committee granted him a waiver that allowed him to continue practicing medicine part-time. He was permitted to earn just enough income as a doctor to cover his expenses, including medical-malpractice insurance. During his six years in the House, he delivered more than 400 babies. The self-described citizen-legislator kept his promise to serve only three terms, and went back to practicing medicine for four years before running for the Senate in 2004. In that race, he promised to serve only two terms, and to keep in touch with the people of his state by continuing his medical practice. Before he was sworn in, however, the Senate Ethics Committee informed him that this would not be allowed.

Under chairman George Voinovich, the Ethics Committee has decided that Senator Coburn's request to treat patients runs afoul of a Senate rule holding that members shall not "receive compensation for practicing a profession which involves a fiduciary relationship." Is the senator "receiving compensation" from his reduced practice even if it brings no net income? The committee says yes. Reasonable people can disagree with that answer, and a large number of reasonable senators do.

Coburn hopes there are enough such senators to support a resolution giving an alternative "sense of the Senate" concerning his practice. Should 67 senators support this challenge to the Ethics Committee's turf, the Senate rules will be formally interpreted to permit Coburn to maintain his practice. Coburn's spokesman notes that the senator ran and won as a citizen-legislator, and asks, "Will the Senate criminalize our Founders' intent?"

In a letter to Coburn, Ethics Committee members harrumphed that their interpretation of the rules was meant to ensure that their colleagues "undertake their official duties as, and understand them to be, a full-time responsibility." But there is no obvious reason that Coburn should be forbidden to practice medicine when other senators engage in less worthy commercial endeavors. Senators have been allowed, in their spare time, to write bad poetry, bad song lyrics, and bad fiction, and to keep all the proceeds from their scribblings. The committee allows payment for "works of fiction (including poetry, lyrics, or scripts), where the payment is not offered because of the author's Senate status." Here the Ethics Committee engages in a little fiction writing of its own, pretending that Barbara Mikulski and Barbara Boxer would be hot publishing properties without their "Senate status."

Senators can also be compensated for the expenses they incur when giving speeches. Shouldn't that practice count as "receiving compensation" if Coburn's medical activities—which generate no net income—do? Some senators spend more time fundraising or playing golf than Coburn does seeing patients. One of Coburn's allies, Sen. Jim DeMint, characterizes as "ludicrous" the claim that Coburn is neglecting his public duties, and points out that Coburn, in his first nine months in Washington, presided over more than a dozen committee hearings and authored ten bills and 72 amendments.

Coburn is shaking up an institution that sees a conflict of interest in occasionally delivering babies, but views the conflict of interest that delivers billions in pork to boost reelection prospects as a senator's inviolable privilege. Call it the Hypocritical Oath. **NR**

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CULTURE

Eighty-One Squares, Oh Joy

The greatness of the new 'timewaster,' Sudoku

ALEXANDER ROSE

THERE's a certain type of person who enjoys doing puzzles, crosswords, brainteasers, and high-school algebra. I'm not one of them. When confronted by a question like this—"If it were two hours later, it would be half as long until midnight as it would be if it were an hour later. What time is it now?"—I crumple, morally as well as mentally. (It's "9 P.M.," apparently.) That tricky devil came from a logic-chopping, number-crunching MENSA quiz on which I scored 19 out of 30, a result they snobbishly classed as "low." Little do they know I achieved even that rank only by some nifty guesswork and a talent for cheating. So much for MENSA members being so clever-clever.

My inability to grasp the simplest of quadratic equations notwithstanding, I, as a proud member of DENSA, am a Sudoku Genius—though I should add that my grandmaster status applies only to the "really easy" level. Anything higher than that up the intellectual ladder and my mediocrity stands naked and quivering in all its terrible majesty.

What is this "Sudoku" of which I speak? Answer: It is a newly popular timewaster requiring the application of pure logic to a problem without the need to call on one's sometimes limited reserves of erudition, patience, or brilliance. Think of it as a crossword, but using only the numbers one through nine, with just 81 squares. There's but one correct possible solution, no need for any of that tedious mathematical knowledge, and it takes maybe a minute to grasp the rules. And here they are: You have a 9x9 grid divided into nine boxes, or mini-grids, each measuring 3x3; all you have to do is fill in each vertical column and horizontal row with the digits one to nine in any order without repeating; each 3x3 box must also contain those nine numbers. That's it. The simpler the Sudoku, the more numbers have been pre-filled by the compiler, leaving you to deduce the rest. The number of possible 81-square combinations is 6,670,903,752,021,072,936,960, so that ought to keep you busy for a while.

Granted, messing about with numbers may not sound an overly engrossing pursuit, but Sudoku is already being talked up as *this* decade's Rubik's Cube (be still,

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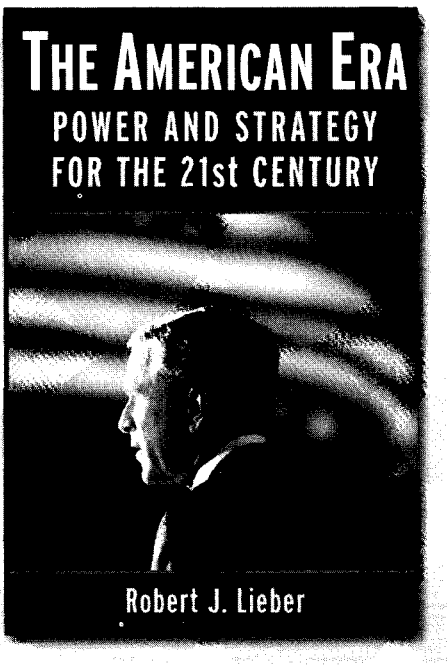

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beating heart), perhaps even as a worthy heir to the throne of Tetris. The cult's adherents claim to be hypnotized by the puzzle, and there is, to be sure, a mesmerizing Euclidean elegance to unraveling the solution square by square, clue by clue. Some fans lurch into *Single White Female* levels of obsession, buying computer programs to generate their own puzzles or subscribing to several of the dozens of newspapers now carrying the game. The British tabloids have dubbed the resulting, if made-up, phenomenon of commuters missing trains, parents forgetting to feed the kids, and so forth, "Compulsive Sudoku Syndrome." A pretentious argot—"X-Wing," "Swordfish," "bifurcation"—has developed to describe several of the more successful tactics used to reveal those infernal numbers.

Over here, more than half of America's leading papers now publish a daily version of the puzzle, and it's amazing to discover that it was only in April that the *New York Post* began importing Sudokus from the British press, which has been agog over the damn things since last November. Even the *New York Times*, home of that impossible—for me, at least—Sunday crossword, may be getting in on the game: Will Shortz, the paper's puzzle editor, is a backer, and he's produced two books of Sudokus in the last couple of months. Indeed, right now *Publishers Weekly* is listing no fewer than three Sudoku compendiums in its list of the top 15 paperback bestsellers, while in Britain the "International Sudoku Organisation" has been established to regulate and adjudicate the growing number of competitions.

The rapid and inexorable rise of Sudoku mirrors that of the great crossword craze of the 1920s and 1930s. Like Sudoku—whose creator, the late Howard Garns of Indianapolis, published one known as "Number Place" in a cheapie *Dell Pencil Puzzles and Word Games* volume in 1979—the crossword was invented over here (by Arthur Wynne of the *New York World* in 1913). Nobuhiko Kanamoto, a Japanese puzzle aficionado, brought "Number Place" to Nippon, where it was perfected and renamed Sudoku. "You can no more get bored of Sudoku than you can get bored of reading novels," Kanamoto recently told the *Sunday Telegraph*, which may be overstating matters a bit. Anyway, in the late '90s, Wayne Gould, a retired New Zealand lawyer, noticed the game in a Japanese Sudoku magazine, spent six years developing software capable of mass-generating the puzzles, and sold the concept to the *Times* of London, which began running them last November.

Though it wasn't the very first British rag to print a crossword (the dubious honor goes to *Pearson's Magazine* in 1922) the *Times* was far-sighted enough to buy the idea of a *daily* crossword in 1930. The *Times* crossword—and especially its diabolically cunning cryptic variant—

		5	7		3	4		
				5				
	2	7	8		9	6	3	
1		4				7		8
	7						2	
5		2				9		4
	8	1	9		6	2	5	
				2				
		6	5		7	3		

soon became the pastime of the lordly Establishment class. One day—in the very same month as Gandhi's Empire-shaking Salt March and the collapse of the German government—the *Times* entertained its readers with a crossword in Latin. "Care rides behind me," it tantalized—a clue to *equitem*, which appears in Ode 1, Line 40, Horace's *Odes*, third book of. As Britain's leaders competed to see who could finish the crossword the fastest, the non-classically educated Hitler propelled himself to power.

Though the rise of the Third Reich can't be ascribed to the arrival of the crossword, it's not entirely a coincidence that crosswords reached the height of their sophistication and popularity in an era of particularly violent political ferment and extremist agitation. For any gibbering fanatic of the One True Faith—whether it be Communism, fascism, socialism, capitalism, conservatism, Islamism, nationalism—his cause is incandescently pure, for it promises to cut through the muddle and messiness of everyday life, straighten the crooked timber of humanity, punish those in error, and provide a single, simple Solution to the Problem.

As do crosswords. In them, there can be only one answer: Which is why crosswords, like the narcotic ideologies of the 1930s, attracted many of the people who regarded themselves as intellectually nimble and gifted, yet fell catastrophically short on common sense, judgment, imagination, and analytical ability. The same might be said for those classic English detective stories that depend on the reader deducing the murderer from an array of hidden clues: These too hit the big time in the 1930s, the decade of *Murder on the Orient Express* and *Death on the Nile*.

Personally, I'm at one with P. G. Wodehouse, who complained that he had once beat "his head against the wall for twenty minutes over a single anagram" in the *Times* crossword before quitting them forever and going off to write about Bertie Wooster's scrapes and japes down at the Drones Club. We're all better off for it. Me, I suspect a lot of the ideological nutters we have pestering us nowadays would be happier if they, like Wodehouse, realized the silliness of wasting their time on politics, war, and religion, and instead belatedly realized that there's never an elegant, clever solution to anything. They should go off and tend their little gardens, like Candide.

Zounds, Alex! I hear you all cry, what has all that heavy stuff got to do with a little harmless Sudokuing? Well, I reply, is it really that harmless? Surely no one would deny that we too are living in a state of flux, at a time of ideological fervor and madness. And now—by a remarkable coincidence—we find ourselves in the midst of a Sudoku frenzy cheerled by individuals obsessed with filling in a bunch of squares multiple times a day. What else for, but to fulfill their megalomaniacal desire for certainty and order in this crazy, mixed-up world?

Er, sorry, I let myself go there a bit, but then, I can afford to, since my own ineptitude immunizes me against the blandishments offered by the ideology of Sudokuism. As this Sudoku madness engulfs us all, my advice is to be wary of those braggarts who become too good, too adept, too clever, too serious, at it. They're the people we need to watch, as there's clearly something inadequate and bossy about them, like the members of MENSA. **NR**

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■ COVER STORY III

Fitzgerald's Day

The indictment looks strong

ANDREW C. McCARTHY

THE two-year criminal investigation into the "outing" of Valerie Plame Wilson as a CIA employee ended with a whimper rather than the bang so obsessively sought by the Bush administration's critics. Much remains unknown. Yet special counsel Patrick Fitzgerald's indictment of a single administration official, I. Lewis "Scooter" Libby, the vice president's chief of staff, illustrates sharply the chasm between law and politics—between the firmament of provable facts that envelopes the prosecutor's world and the wild exaggerations for which partisans are known.

The partisans do not fare well in the harsh light of the facts. The Fitzgerald investigation convincingly reveals as bankrupt the tireless tropes of anti-war extremists and their supporters in the media. There was no far-flung administration conspiracy to crush dissent by maliciously leaking a covert agent's identity in retribution for the criticisms her husband, former ambassador Joseph Wilson, had made of the Iraq War.

Rather, during a small number of conversations with a handful of journalists, Libby and one or two other officials made passing references to Plame's working for the CIA. That revelation was not profound: There are thousands of people whose employment by the Agency is well known. Moreover, the intention of those who made the revelation was patently not to harm Plame or our national security. It is questionable that Libby even knew Plame had deep-cover status—something no administration official is alleged to have disclosed (and which the special counsel still declines to confirm). Nor is it clear that Libby knew that the mere fact of Plame's being employed by the CIA was classified.

Libby and other officials conveyed that Plame worked at the CIA in an effort to rebut Wilson's self-indulgent, thoroughly disingenuous, and irresponsibly high-profile claim that the administration lied the country into war by intentionally misrepresenting Saddam's nuclear intentions. Wilson claimed to know this because of his 2002 CIA-sponsored mission to Niger to investigate intelligence reports that Iraq had sought processed uranium there—a mission, he intimated, that was undertaken at Vice President Cheney's request. (It wasn't.) Wilson claimed to have been chosen because of his unique Foreign Service qualifications. In fact, he was an anti-Bush demagogue whose assignment was rigged by a CIA insider, his wife, who was predisposed against the "crazy" notion that Saddam would seek nuclear components in Niger. (A subsequent Senate investigation determined that Wilson's trip bolstered, rather than discredited, the intelligence supporting that notion.)

An administration response in a matter of such public importance—especially after Wilson was, remarkably, permitted by the CIA to write about his mission in a *New York Times* op-ed—was not only appropriate but urgent. It was incumbent on those making the response, however, to take care that classified information was not compromised, and to be truthful about what they had done if asked later.

It is essentially on the latter score that Libby is alleged to have failed. He has been accused of obstructing justice and lying to the FBI and a federal grand jury. The allegations are serious, but they are not catastrophic for the administration, given their narrow scope and Libby's low public profile. More damaging would have been charges against the president's top political strategist, Karl Rove, who helped craft the administration response to Wilson. But he was not indicted, and it is unlikely that he will be.

Although the indictment has undermined scurrilous libels by administration critics, it has also, unfortunately, generated no small amount of legalistic backbiting by Libby's defenders. These include many Republican partisans who were famously outraged when the Clintonistas criticized special counsels during the Nineties. To be sure, Fitzgerald has given them some openings, but, although it is worth emphasizing that none of the charges against Libby has been proven, the talking points of Libby's defenders smack of a disregard for inconvenient facts. (I note, in the interest of full disclosure, that Pat Fitzgerald was my colleague and trial partner in a long terrorism case. We have been friends for many years.)

POWERFUL AND OVERWHELMING

On initial reading, the indictment is powerful and suggests that the case against Libby is overwhelming. Without ever addressing the deep secret of whether Plame was a "covert agent," it asserts that her "employment status was classified." Two months before her husband's ballyhooed *Times* op-ed, Wilson began agitating about administration "dishonesty" in the run-up to the war as a (barely) anonymous source, first in an early May 2003 column by Nicholas Kristof of the *Times* and, during mid-June, in articles in both the *Washington Post* and *The New Republic*.

Libby is said to have begun taking notice in late May, when he

Mr. McCarthy, a former federal prosecutor, is a senior fellow at the Foundation for the Defense of Democracies and an NRO contributor.

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asked for information about Wilson's Niger trip from the State Department. State's intelligence arm began an inquiry and gave Libby periodic updates. Meanwhile, in the space of four days in June, Libby had conversations with the vice president and three other officials. From those conversations, he learned that Plame's wife worked at the CIA and was involved in arranging Wilson's trip. Two other officials—one identified in the indictment as "Official A," who, the speculation runs, was Karl Rove—later mentioned the identity of Wilson's wife to Libby.

The indictment intimates that, in the interim, Libby understood the Plame information's sensitivity and reflected on how to handle it. It alleges that, referring to "Wilson's trip" (but not specifically to Plame), Libby told his principal deputy "there would be complications at the CIA in disclosing that information publicly," and insisted that the matter not be discussed on a non-secure phone line. He told then–White House press secretary Ari Fleischer that Plame's employment at the CIA "was not widely known." He asked a lawyer in the vice president's office what paperwork would be on file at the CIA if an employee's spouse took an overseas junket. And on a trip with the vice president, aboard Air Force Two, he is said to have "discussed with other officials" what he should say in response to pending media inquiries.

While all that was going on, Libby had conversations with three journalists. Those conversations are noteworthy for both what was allegedly said and what allegedly was not. Libby supposedly began speaking with the *New York Times*'s Judith Miller on or about June 23—two weeks before Wilson's op-ed ran—and, while disparaging the CIA's selective leaking and Wilson's trip, told her, "Wilson's wife might work at a bureau of the CIA." On or about July 8, he allegedly agreed to speak to Miller about Wilson only on condition that she source him as a "former Hill staffer" rather than the customary "senior administration official." It's said he then told her he believed Wilson's wife worked for the CIA. On or about July 12, in addition to telling Miller again that Wilson's wife worked for the Agency, Libby is alleged to have confirmed for Matthew Cooper of *Time* magazine that "Wilson's wife was involved in sending Wilson on the trip." Meanwhile, on or about July 10, Libby spoke with NBC's Tim Russert. The indictment is adamant that "Libby did not discuss Wilson's wife with Russert"—although it does indicate that Libby complained about coverage he was receiving from an MSNBC reporter, and does not say that the conversation was unrelated to Wilson and Niger.

The first media report that Plame was a CIA "operative" appeared in Robert Novak's now-infamous July 14 column, sourced to two anonymous administration officials. The column prompted outrage on the left (even among those heretofore not known for their worries about national security) and at the CIA, which referred the matter to the Justice Department and, ironically, appears itself to have leaked this classified referral, without consequence. Libby was interviewed by the FBI in October and November 2003, and later—after Justice turned the matter over to Fitzgerald's independent probe—testified before the grand jury twice in March 2004. He is accused of having told investigators that he did not know Plame worked for the CIA until being so informed by Russert around July 10, 2003. He said he had a distinct recollection of being "surprised by" Russert's purported statement that "all the reporters" knew where Plame worked. He is also said to have falsely denied having spoken with Miller about Wilson's wife on or about July 8, and to have falsely claimed he told Cooper on or about July 12 that "reporters were telling the administration that Wilson's wife worked for the CIA" but that he (Libby) "did not know if this was true."

AVENUES OF ATTACK

The narrative seems damning: Libby supposedly went to school on Wilson, learned classified information about his wife that he well knew was sensitive and shouldn't be disclosed, disclosed it anyway in a manner transparently designed to leave no fingerprints, and then lied about it. But, like most legal matters, it's more complicated than that.

To begin with, Libby is not charged with leaking classified information. Moreover, though the indictment is suggestive of a sustained scheme to mislead the investigation into what Libby knew about Plame, when he knew it, how he learned it, and what he did with it, the actual accusations are considerably thinner. Libby is principally charged with lying not about his general knowledge, deliberations, and exertions, but about his descriptions of three isolated conversations with journalists. This has given rise to three avenues of attack by Libby sympathizers.

Libby is not charged with leaking classified information, but with lying about his descriptions of three isolated conversations with journalists.

The first and most ardent is that because Libby isn't charged with leaking classified information he mustn't have done so, and thus has been smeared by the prosecutor. On this, the special counsel has given the Libby supporters some ammunition. Deviating from what has been admirable restraint, Fitzgerald—while stressing at a press conference that his public comments should be limited to the four corners of the just-filed indictment—declared that Plame had been a "CIA officer" whose "cover was blown." This, he said, justified a prosecution to vindicate the public interest in national security. Those claims, however, are not in the indictment itself. It doesn't allege that Plame was a CIA officer whose cover was blown—just that she was a CIA employee, which affiliation was classified but was nonetheless discussed with reporters. That this did not obviously imperil national security is inferable from the fact that no harm is specifically alleged in the indictment (although there is a general statement that exposing CIA employment can sometimes harm the U.S.) and that the grand jury didn't charge Libby with violating the 1917 Espionage Act, which criminalizes unauthorized disclosures of classified material.

But this critique does not come close to establishing that Fitzgerald set out to smear Libby, and in fact the opposite may be

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true: Fitzgerald may have given Libby an enormous benefit of the doubt. Plainly, if what Fitzgerald says is true, which a trial may prove it to be, the charges against Libby are not an unfair slander. The Plame information *was* classified, and Libby *does* appear to have disclosed it to reporters. That *is* leaking classified information. Is it *actionable* leaking? Maybe, maybe not. It would depend on whether Libby acted knowingly and willfully, a possibility the indictment implies but does not allege. So Fitzgerald has a potential Espionage Act violation but has elected not to charge Libby for it. He has given Libby the close call on criminal intent, and refrained from overzealous enforcement that could turn the Espionage Act into a loathsome "official secrets" law that would permit the government to suppress dissent and evade accountability by capriciously branding any uncomfortable topic "classified." In any event, with Libby having ostensibly performed every act necessary to leak classified information, it is a bit much for his apologists to cry foul over the prosecutor's saying so.

The second theme of Libby's defenders follows from their first. Since Libby didn't really leak classified information, he had no reason to lie about it, so he mustn't have done that either. This facile conclusion ignores the obvious. Not being charged with something is a far cry from not having done it—Bill Clinton was never criminally charged with perjury and obstruction of justice. Further, one needn't know with apodictic certainty that one is criminally culpable in order to have a motive to protect oneself with a cover-up. Libby appears to have had abundant reason to be concerned that he had done something illegal, whether or not charges against him could be proved beyond a reasonable doubt. Besides, politicians have incentive to lie about lots of things that aren't crimes. It would have been politically damaging for an administration whose *raison d'être* is national security to be revealed as reckless in its handling of classified information.

Finally, Libby's champions contend that his misstatements are best understood as innocent failures of recollection by a busy public official pressured to remember three out of hundreds of media conversations. Plainly, they have a point. That is what a trial, if there is one, will determine. But that's not what these folks were saying during the Clinton scandals.

More to the point, Libby is not said just to have failed to report to the grand jury something that happened. He is accused, rather, of making up something that didn't: a yarn about being "taken aback" by purported Plame chatter from Tim Russert. The indictment is categorical: It isn't simply that Russert remembers things differently, but rather that this topic was never discussed. The force of that charge leads those of us who follow these sorts of things to suspect that the careful Fitzgerald has some bullet-proof evidence—something beyond Russert's say-so—to back him up.

If he does, that's serious business. It is perfectly appropriate for the administration's supporters to wonder aloud at the patent inequities here. Why is Libby called to account while Wilson, a demonstrable fraud, seems immune? How is it that the CIA can classify as a national secret a simple employment tie that many people know about (even if it's not "common knowledge"), but not so classify an overseas mission to determine whether an enemy against whom the nation is readying for war is developing nuclear weapons? Good questions—but not ones that justify obstructing an official investigation. That was wrong ten years ago, and it's wrong now. **NR**

■ POLITICS

A Casey They'll Let Talk

The Democratic party is happy with Bob Casey Jr., challenging Sen. Rick Santorum in Pennsylvania

JOHN J. MILLER

NOBODY will ever accuse Bob Casey of lacking ambition. When he announced in March that he would run against GOP senator Rick Santorum, he had served as Pennsylvania's state treasurer for fewer than seven weeks. It was not the first time that the meats from one of his campaigns did coldly furnish the tables of another. In 2000, Casey waited only two weeks between his reelection as auditor general and his filing of papers to run for governor. That effort didn't work out for him—he lost a hard-fought primary in the spring of 2002—but the failure did little to slow his political drive. Before long, Casey set his sights on the state treasurer's post. For the last five years, even as he has held one office, he has always seemed to grasp for another. Talk about the permanent campaign.

Casey's next election day is still a year off, but his effort to unseat Santorum has already shifted into high gear. From a Democratic perspective, it could hardly be going any better: The challenger has led from the start, and an October poll put him ahead of the senator by a wide margin, 52 percent to 36 percent. The stakes are high for conservatives, who see Santorum as one of their strongest allies in Washington, as well as for liberals, who probably dislike Santorum more than any other senator since the retirement of Jesse Helms. Whatever the outcome, the Pennsylvania contest promises to become the most-watched Senate race of 2006. It is also one of the most fascinating, and its results will carry important lessons for both Democrats and Republicans.

That's because the 45-year-old Robert Patrick Casey Jr. is the political equivalent of an endangered species: He's a pro-life Democrat. In this respect, he is similar to his late father, who was a two-term governor as well as the author of what may be the most famous undelivered speech of his generation. Casey Sr. was banned from speaking at the 1992 Democratic National Convention because his party's ideological gatekeepers couldn't abide the idea that even a single speaker might dissent from a platform that called for abortion on demand.

Because of their shared pro-life views, the son is sometimes said to be the second coming of his old man. They actually look quite a lot alike, from their tall stature (6'2") to their dark-and-bushy eyebrows. The fact that Casey Jr. has the Democratic primary field virtually to himself—he faces a couple of token

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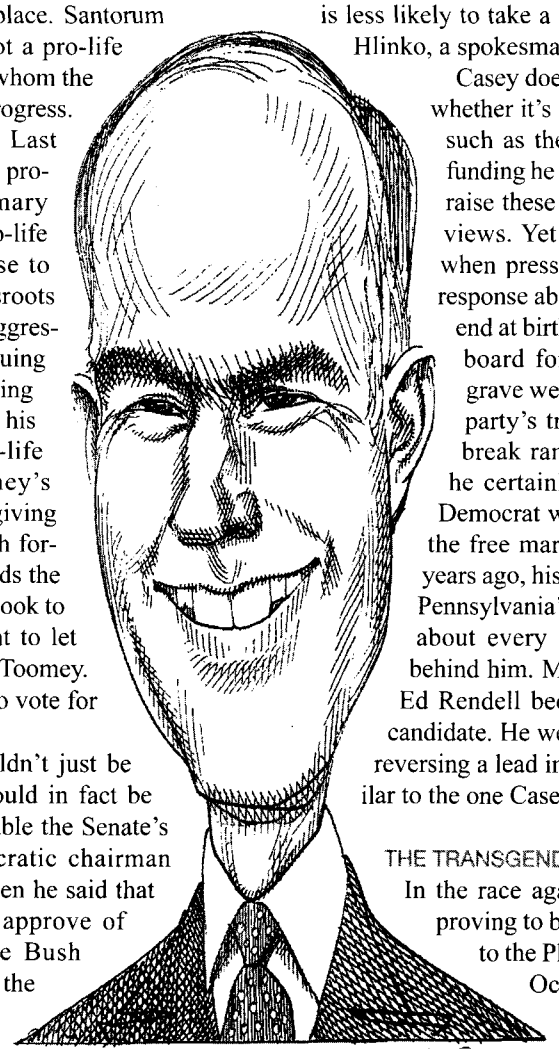
opponents—may represent a minor triumph for pro-lifers. Whereas Team Clinton let feminist puritans hang a "No Caseys Allowed" sign outside the party's small tent in 1992, today's Democratic bigwigs urged the son into his fourth campaign in five years. Senate majority leader Harry Reid and Democratic campaign chairman Chuck Schumer recruited him for the new race; John Kerry has pitched in with fundraising. They want Casey to run not only because of his gold-plated name, but also because they think his pro-life views may deny Santorum a vital advantage. The idea is to get pro-lifers to cast their votes on the basis of anything but abortion.

BACKWARD OR FORWARD?

In doing so, however, Democrats are asking pro-lifers to accept a devil's bargain: The election of a pro-life Democrat to the Senate may look like a step forward—a kind of re-ensoulment for a party that has embraced pro-abortion extremism—but the defeat of Santorum would in reality push pro-lifers in the other direction, like a middle linebacker who barrels into a halfback at the line of scrimmage. There are two kinds of pro-lifers in Congress: those who vote a certain way, for reasons of conscience or expediency, but otherwise keep mum, and those who not only vote a certain way but also make sure that meaningful votes are actually scheduled and take place. Santorum belongs in this latter category. He's not a pro-life backbencher, but a pro-life leader upon whom the entire movement depends for forward progress. He has committed a single apostasy: Last year, he supported Sen. Arlen Specter, a pro-abortion Republican, against a primary challenge from Rep. Pat Toomey, a pro-life conservative. Toomey came very close to toppling the incumbent, and many grassroots activists grumble that by campaigning aggressively for Specter, rather than merely issuing a perfunctory endorsement and then sitting on the sidelines, Santorum undermined his own principles and damaged the pro-life cause. In the 18 months since Toomey's close-run thing, there has been some forgiving by conservatives but perhaps not enough forgetting. Yet even Toomey, who now heads the Club for Growth, says pro-lifers should look to the future. "This cause is too important to let personal grudges get in the way," says Toomey. "I'm encouraging all of my supporters to vote for Senator Santorum."

For pro-lifers, Casey's election wouldn't just be the cause of a leadership deficit. It would in fact be something far worse: It would help enable the Senate's pro-abortion leaders. Perhaps Democratic chairman Howard Dean put it best, in March, when he said that the "progressive community" would approve of Casey because he would oppose the Bush administration's "extreme nominees" to the federal courts. Therefore, he continued, Casey represents "a qualitative improvement for the community that believes in a woman's right to choose." Although Casey has said he would have voted to confirm John Roberts to the Supreme Court, now he says he wants to "reserve judgment" on the nomination of Samuel Alito. He also has defended the Democratic filibusters on judges that have caused conservatives so much consternation. It is hard to see how making Democratic filibusters *easier* would advance the culture of life. If Casey, who is a lawyer, happens to find himself seated on the Judiciary Committee, he won't be voting for Specter as chairman, but for Pat Leahy—or, perhaps in future sessions, for Chuck Schumer. No matter what his committee assignments, Casey may eventually find himself in the position of helping pick a successor to the moderately pro-life Harry Reid—and thus elevating a committed pro-choicer such as Dick Durbin of Illinois into a position of power. Again, pro-lifers will wonder how this helps their cause.

Pro-abortion groups aren't thrilled with Casey, but they also appreciate the prime importance of beating Santorum. Consider the case of StemPac, a new political-action committee that advocates stem-cell research involving the destruction of embryos. Casey does not support this policy. His position on stem cells mirrors President Bush's. And yet STEMPAC is lining up behind him. "A lot of what it comes down to is that Casey is less likely to take a leadership role against us," says John Hlinko, a spokesman for the group.



ROMAN GENN

Bob Casey Jr.

Casey doesn't really like to talk about life issues, whether it's stem cells or emergency contraception such as the "morning after" pill (whose federal funding he supports, unlike Santorum). He doesn't raise these topics in his stump speeches or interviews. Yet Casey can't avoid them, either, and when pressed he often retreats into a boilerplate response about how the pro-life obligation doesn't end at birth. He uses this observation as a springboard for his political vision of a cradle-to-grave welfare state that is entirely faithful to his party's traditions. In other words, Casey may break ranks with Democrats on abortion, but he certainly shouldn't be mistaken for a New Democrat who wants to reorient his party toward the free market. When he ran for governor three years ago, his major policy proposal was to increase Pennsylvania's minimum wage by $1 per hour. Just about every union in the Keystone State rallied behind him. Meanwhile, former Philadelphia mayor Ed Rendell became the Democrats' "pro-business" candidate. He went on to wallop Casey in the primary, reversing a lead in the polls that looks suspiciously similar to the one Casey now holds over Santorum.

THE TRANSGENDERED, TOO!

In the race against Santorum, Casey is once again proving to be an old-school Democrat. His speech to the Philadelphia Chamber of Commerce on October 14 was a flop, with its calls for increasing taxes on "the top 1 percent," boosting the budget of the Small Business Administration,

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and spending more federal cash on job training, science education, and alternative-fuel technology. But its central focus was on Santorum, whom Casey portrays as an ideological crusader who is out of touch with ordinary Pennsylvanians. "For me, Pennsylvania has always been and will always be the first priority," he said. "I'm not interested in tilting at ideological windmills." Maybe this line works in front of Democratic activists; it did nothing to excite an audience of centrist business leaders. Santorum spoke from the same podium just a few minutes later and gave a gutsy and persuasive speech on (among other things) why Philadelphians should oppose Canadian drug imports. Casey's reception was polite but reserved; Santorum's was warm and encouraging.

Having never held a legislative office, Casey does not own a long history of recorded votes. Yet he has commented from time to time on the major issues of the day. He was opposed to welfare reform in 1996, even though half of the Senate's Democrats as well as President Clinton backed it. He is against school choice, even though parochial education is popular in Pennsylvania. He also has come out against a marriage amendment to the Constitution, condemning the effort to pass one as an "appeal to bigotry." The Human Rights Campaign, a gay-rights group, has hailed "Casey's commitment to gay, lesbian, bisexual, and transgender equality."

The latest polls may look grim for Santorum, though it would be wrong to say his campaign is desperate. Yet anxiety levels appear to be high enough that the senator is open to unconventional ideas. "We've challenged Casey to debates this fall," says John Brabender, a longtime Santorum advisor. The Casey campaign of course has rejected this proposal because it's feeling confident about the way things are going right now but not so confident about Casey's ability to square off against Santorum, who can be effective in unscripted settings.

Casey is also taking advantage of the fact that few people know much about him. He has kept a low profile, making only a handful of public appearances and keeping the media at arm's length. At this point in the campaign, he can still be many things to many people: a forceful pro-life champion in the Democratic caucus, a guy who will cast some pro-life votes but won't upset the status quo, or merely a useful hack with the best chance of defeating Santorum next year. When he is forced to spell out positions on key issues, his poll numbers are bound to tumble. In August, for instance, Casey's campaign manager Jay Reiff demanded the Bush administration announce a firm timetable for withdrawing troops from Iraq. At the very same time, however, Casey said such a demand would be unwise because "you risk giving the enemy information they shouldn't have." John Kerry learned the perils of trying to have it both ways on Iraq, and Casey may yet pay a price himself.

Just about every campaign is susceptible to these kinds of flubs, of course, but over time Casey may find himself especially vulnerable. With the exception of that 2002 gubernatorial primary, Casey has never faced a difficult election—and he's never gone toe-to-toe against a Republican who stood a real chance of beating him. Will he prove to have a glass jaw? Will he show an ugly flash of temper?

For Santorum, the hope must be that once his challenger really starts swinging, the mighty Casey will strike out. **NR**

■ THE SUPREME COURT II

The Problem With the Court

Well, the justices, being lawyers, think like them

ROBERT F. NAGEL

All across the political spectrum, observers have recognized the pivotal significance of Samuel Alito's nomination to the Supreme Court. With Judge Alito replacing Harriet Miers as the likely successor to the meandering Sandra Day O'Connor, President Bush has set the stage for a debate about a fundamental shift in the direction of the Court. Yet in order to fully appreciate the gravity of the confirmation battle that is about to ensue, it is first necessary to understand the distressing course the Court has taken over the past 35 years.

By 1972 President Nixon had placed Justices Burger, Blackmun, Rehnquist, and Powell on the high court. He did so after making the judicial activism of the Warren Court a major campaign issue. Since then, Republican presidents have appointed seven justices, all for the announced purpose of curbing the tide of judicial activism. Even President Clinton's two appointments, Stephen Breyer and Ruth Bader Ginsburg, were presented as moderates who would refrain from adventures on the bench. In short, for roughly three-and-a-half decades, the politics surrounding the Supreme Court have been dominated by promises of judicial restraint. During that time the Court has been packed with Republican nominees, and we have heard continuously—from presidents and nominees alike—that judges should not make the law, but rather simply apply it.

While it is widely recognized that these assurances have not exactly been translated into action, it is difficult to grasp the full scope of the failure. The problem begins with the fact that neither the Burger Court nor the Rehnquist Court reversed even one of the Warren Court's egregiously activist decisions establishing new individual rights. In fact, a few years before he died, Chief Justice Rehnquist himself wrote a decision emphatically reaffirming the notorious ruling of *Miranda* v. *Arizona*, which requires police to inform criminal suspects about their right to remain silent before questioning them.

The conservative instinct to respect precedent might be thought to explain this sustained refusal to reverse course, but it cannot explain why so many Warren Court rulings have been recklessly expanded. It cannot explain, for example, the Burger Court's transformation of a principle against legally enforced segregation into a demand that school districts achieve racial balance through extensive busing programs. Nor can it explain the Rehnquist

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Court's expansion of earlier, limited rulings on the separation of church and state into an aggressive campaign to stop even the slightest appearance of government endorsement of religion, including non-denominational prayers at school graduations, student-led prayers at football games, and public displays of the Ten Commandments.

But even this is only the tip of the iceberg. Since 1970 the Court has established new rights undreamt of during the Warren Court era. Everyone knows of a few outrageous examples, such as *Roe* v. *Wade*, but the record does not end there. The original abortion decision, which was itself roundly condemned by legal scholars as having no legal justification, has been gradually extended to grant abortion rights to minors and to protect even partial-birth abortions. Indeed, in voting to reaffirm *Roe*, three Republican appointees—O'Connor, Kennedy, and Souter—made the most extreme claims for judicial power ever articulated in American history.

The Court's record of activism is not confined to a limited set of highly visible issues, but rather extends to every corner of public life. It includes an extensive campaign to transform gender roles, as well as significant efforts to rewrite defamation laws in all fifty states. It has manifested itself in decisions to protect pornography and nude dancing and offensive language, to require free public education for the children of illegal aliens, and to normalize homosexuality. In a mostly forgotten foray, the Court once even adopted counterculture guru Charles Reich's theories to announce that public assistance is a property right, and that sixth-grade schoolchildren must therefore be given a hearing before being suspended. This has resulted in far-reaching and destructive changes, both to public administration and to educational discipline.

It would be an understatement to say that 35 years of appointing justices for the announced purpose of reining in the Court has not worked.

PICK YOUR EXPLANATION

It would be an understatement to say that 35 years of appointing justices for the announced purpose of reining in the Court has not worked. The most common explanation for this sad failure is the Souter Explanation, so called because when David Souter was nominated to the Court, he had almost no public record on any important constitutional issue. Of course, he soon turned out to be one of the most liberal members of the Court. From this, it has been assumed that an accurate prediction regarding the future behavior of a judicial nominee requires a healthy amount of accurate information about his track record. But while the prepossession of such information may be a necessary condition for choosing nominees who will restrain the Court's power, it is clearly not sufficient. After all, there are many examples of people who did have extensive public records before their nominations—people such as ex-governor Earl Warren and ex-politician and judge Sandra Day O'Connor—but who nonetheless turned out much differently than their records would have suggested.

The deficiency of the Souter Explanation leads to the Kennedy Explanation, which posits that nominees are subjected to intense pressure to undergo radical ideological changes once they get onto the Court. Much of this pressure is thought to be social, as new justices come to live in Washington, D.C., where a large bulk of the residents think that the purpose of life is to exercise political power over others. They begin to read the *Washington Post*, and they socialize with elite liberal law professors. If they are like Justice Kennedy—who is especially fond of relying on foreign legal sources when interpreting the American Constitution—they attend international judicial conferences where the prevailing belief is that judges are the ultimate guardians of civilized values everywhere.

Like the Souter Explanation, the Kennedy Explanation surely contains some truth. But it also has its problems, as most people who come to be justices have already spent significant stretches of time as powerful appellate lawyers or ambitious executive-branch officials. Thus it seems that many of the corrupting pressures should go to work—and therefore become detectable—long before the nomination and confirmation processes begin.

A third and fuller explanation of judicial activism is so obvious that it is generally ignored. Simply put, people who are put on the Supreme Court are almost always successful lawyers. This means that they tend to be adept at—and therefore not inclined to be skeptical of—the way lawyers and judges think. And the way that lawyers and judges think is one of the basic reasons that we have such a powerful judiciary.

Consider first the basic legal instinct to respect and follow the logic of prior cases. The consequences of this instinct are almost always underestimated. In fact, firmly entrenched lines of cases now establish the basically liberal direction of the Court, all across the board. It is now settled precedent that government cannot endorse religion, that a generalized right to privacy is part of the Constitution (and that this right applies to an open-ended array of issues involving sexuality and family life), that pornography is protected by the First Amendment, and that equal protection requires the invalidation of any legislative distinction that judges consider irrational. Even the reversal of one or two landmark cases, such as *Roe* v. *Wade*, would not significantly alter the fundamentally interventionist jurisprudence of the Court.

More generally, many lines of cases now hold that the courts must decide whether an interest asserted by the government to justify a statute is illegitimate or, if legitimate, how important it is. These same legal doctrines also require judges to decide whether the legislature has chosen the best or most effective way of achieving its interests. This is to say that it is now normal and required practice for judges to make essentially the same kinds of assessments about the wisdom and efficacy of legislation as legislators do. It is easy to say at a confirmation hearing that judges should

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not legislate from the bench, but dozens of authoritative cases require that they do. Indeed, the line between a legal and a political judgment has been obscured to the vanishing point.

Respect for precedent is only one aspect of a broader inclination in the legal profession to honor authority generally and the judiciary especially. This inclination has natural appeal, especially for conservatives, but it has been taken so far in the nation's law schools that the Supreme Court is commonly depicted as an indispensable political and moral leader: Its role in cases such as *Brown* v. *Board of Education* was nothing less than to save the country from profound moral paralysis; its function in cases involving Nixon's Watergate tapes and the 2000 Florida election dispute was to save the political system from chaos and fecklessness. It is this same grand view of the centrality of judicial power that caused three Republican appointees in *Planned Parenthood* v. *Casey* to write that opposition to the Court's decision in *Roe* threatens the American constitutional system.

WORDS, WORDS, AND MORE WORDS

At its best and highest levels, the practice of law involves the marshalling of rational arguments and the imposition of order on complex factual disputes. It is a profession that honors detachment, discipline, intellect, and, above all, words. As valuable as these traits can be, those who are trained to rely on them in their daily work can easily become distrustful or even disdainful of the political process because that process involves unruly conflict, raw power, and emotionality. In politics the strongest arguments do not always prevail, and words are sometimes less important than experience; failure, disorder, and even disaster are always possibilities. Judges, who occupy an even more controlled environment than do practicing lawyers, often view the outcomes of the political process as irrational, unjustifiable, or excessively risky.

Finally, it is now accepted by the bulk of the legal profession, including many of its most influential scholars and successful practitioners, that there is no single correct method for interpreting the Constitution. As now-Chief Justice John Roberts said at his confirmation hearings, the correct sources of constitutional meaning vary depending on the nature of the case. Sometimes a justice should look at the plain meaning of the text, but sometimes that can be overridden by historical information or by the overall logic of the document or by changes in social conditions or by evolving political practices or by philosophical considerations. This is what most sophisticated lawyers believe, and it shapes the way they formulate their arguments.

This flexible variety of interpretive methods may sound reasonable enough, but in operation it means that judges are free to move from one method or combination of methods to another. This in turn means that the justices are free in a very real sense to give whatever meaning they wish to the Constitution. If the literal meaning of the text seems unfortunate in a particular case, it is permissible to shift to some other source of meaning until the result seems acceptable. A justice committed to widely accepted understandings about what it is to engage in interpretation, then, is committed to a method that permits the justice's preferences to displace constitutional meaning. This is not left-wing excess; it is mainstream legal thinking.

If the root cause of judicial excess is the way lawyers think, what is to be done? Certainly, it is necessary to continue to study the records of judicial nominees carefully. But accurate predictions about specific positions that a nominee will take once on the Court, even if they are possible, will not change the basic direction of the Court. To do that it is necessary to look for those lawyers who are confident enough and independent enough to challenge established patterns of thought and to resist deeply ingrained instincts. It is clear that such lawyers exist, as both Justices Thomas and Scalia demonstrate, but to find them it is necessary to look beyond credentials and ideology.

It is necessary also to recognize that even at their best, the nomination and confirmation processes may never be fully adequate to restrain the Court. In this event, renewed attention needs to be directed at other political checks on the federal judiciary. Congress so far has lacked the political will to enact jurisdiction-stripping legislation or to reverse egregious judicial errors through constitutional amendment. This failure means that for some 35 years, we Americans have been more interested in the melodrama of confirmation hearings than in real change. **NR**

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ROB LONG

From the inbox:

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WilsonIV@HisExcellencytheAmbassa
dorJosephWilsonIV.com
FROM: CindySheehan@hotmail.com
RE: Could you please . . .

Could you please let Tim Russert or Bob Schieffer know, the next time you see them, that I'm still chained to the north gate of the White House, right next to the small-ish concrete parking stanchion? Thanks!

Sent wirelessly with BlackBerry

TO: ScooterLib@gmail.com
FROM: DCheney@yahoo.com
RE: I'm thinking . . .

I'm thinking about you a lot during what I know is a difficult and stressful time in your life. I only wish that Lynne and I could be there for you. As you know, any contact between us is subject to the scrutiny of the special prosecutor (Hi, Patrick!) and it's therefore difficult to tell you exactly how I feel about our friendship and your years of wonderful service to this office and our country. I'm reminded of a passage from one of my favorite Gospels, the Gospel of Marc, in which Marc talks about being "Rich in good works," or something like that. I'm pretty sure it's in Marc "Rich in good works." Yeah, come to think of it, I'm absolutely positive and have had it confirmed verbally by the president, who's a pretty good Biblical guy, that in this situation, your situation, the Biblical passage that pertains is in Marc "Rich in good works," etc., etc. Get me?

TO: DaJudge@gmail.com
FROM: WhiteHouseCounsel@white-
house.gov
RE: Congrats!!!!!

Dear Judge Alito:

Congrats on the nomination!!!! Seriously!!! I know it may seem "weird" or "awkward" to get a congratulatory e-mail from me, but I want you to know how thrilled and tickled I am that you got the nod when I withdrew for reasons that had to do with papers and such that I couldn't in good conscience turn over.

Anyway. The truth is, your name was at the top of our list the whole time. I remember the meeting when I had all the names and files in order and the president pointed to yours and said, "Good man," and I said, "Yes you are, Mr. President," and he said, "No, I mean Judge Alito," and I said, "Oh, him, yes, he is a good man, Mr. President, but not as good as . . ." and then someone (I think Cheney) came into the room and we sort of got into other stuff.

The point is, Congratulations!!!!!! It was wonderful to see you and your family in the pictures on the news too. I certainly hope that Philip and Laura realize how "cool" their parents, you and Martha-Ann, are!!!

Gotta go. And again, Congratulations!!!! Seriously!!!!

Harriet

TO: ValeriePlame@opcenter.cia.gov
FROM: Dorothy@sidwellfriends.edu
RE: 2005 Career Night

Dear Valerie Plame:

We'd like to thank you for your participation in "Career Night" here at Sidwell Friends School. For years, the students have enjoyed your presentation about the ins and outs of working for the CIA. In fact, some of them have since gone on to college, and at least one of them is, I think, currently a junior analyst at Langley.

This year's "Career Night" is scheduled for November 14. I certainly hope you can make it. For many years, your presentation has been the highlight of the event!

Thanks!

TO: ScooterLib@gmail.com
FROM: DCheney@yahoo.com
RE: Ready to laugh?

Ready to laugh? It turns out that I got my Bible stuff all mixed up. It isn't the Gospel of Marc I was talking about. (Apparently, Marc isn't even spelled like that. It's "Mark." But I think my spelling is more apt.) The passage I cited is in one of Paul's letters—to Timothy, I want to say—not important, though. What's important is that you take care of yourself over the next few months, especially health-wise. You have a tendency to look pale and to forget to eat. Why, sometimes you're a veritable Caspar the Friendly Ghost! So remember, Caspar: wine, burger, it's all good, you gotta eat! Keep up your strength! I was just talking to the president, and I told him that I had recommended to you, Caspar, wine, burger, and he nodded vigorously. Thought you'd like to know . . .

TO:
HisExcellencytheAmbassadorJoseph
WilsonIV@HisExcellencytheAmbassa
dorJosephWilsonIV.com
FROM: CindySheehan@hotmail.com
RE: Hello? Hello?

Still here, Joe. And it's getting cold out, especially at night. Caught you on Wolf Blitzer yesterday. Did you mention to him that I'm still out here? I kept thinking that the next news van would be for me, but they just kept doing stand-ups on the lawn for the Libby thing and the Alito thing, and I guess they couldn't hear me shouting. I shouldn't have chained myself to this particular stanchion, I realize now, but it's sort of too late. Send somebody soon, okay? I'm thirsty.

Sent wirelessly with BlackBerry

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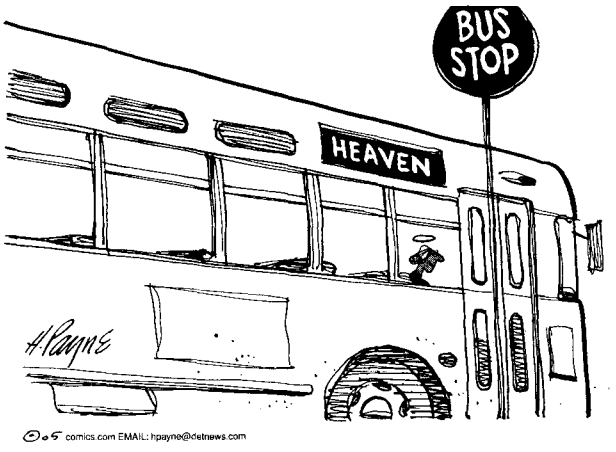
HELP!!!!

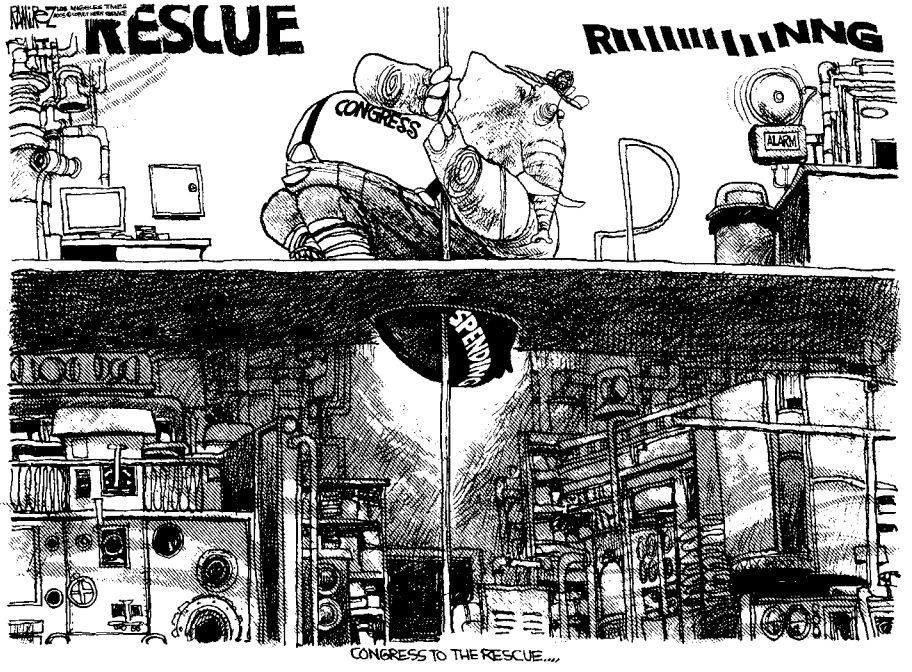
Scowcroft Remembers

Like the Ghost of Christmas Past,
Brent, in The New Yorker, *gassed*
Sorrowfully over how
Sonny goes from row to row.
Never bragging, Brent refers
To those many ruffled furs
He smoothed over, sort of, when
Daddy smote the Saracen.

—W. H. von Dreele

"I don't think you can have Geraldo's head cut off—he lives in the United States."





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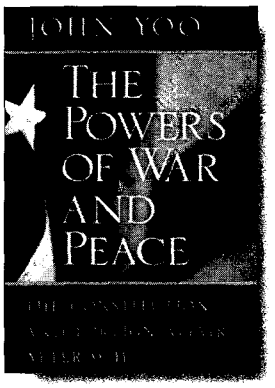
Rights and Conflicts



The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11, by John Yoo (Chicago, 378 pp., $29)

DAVID B. RIVKIN JR. & CARLOS RAMOS-MROSOVSKY

In this book, Berkeley law professor—and former Bush administration official—John Yoo advances a new constitutional paradigm for post-9/11 American foreign policy. Yoo's book was prompted by the emergence of a dangerously unstable international environment, in which the assumptions that peace will be the default state of affairs and that "the United States must seek to reduce the amount of warfare" are "no longer realistic."

The U.S. managed to drift through the relatively placid post–Cold War 1990s with a legal and bureaucratic structure that prioritized consensus in foreign-policy making and, among other things, discouraged the waging of a more vigorous campaign against al-Qaeda. America now faces shadowy and undeterrable enemies who seek nothing short of its destruction. To survive and prevail in the Terror War, the U.S. needs to act quickly, decisively, and, often, secretly. Yoo's paradigm affords the executive branch the flexibility necessary to confront the new security challenges while remaining faithful to the Constitution.

The Constitution, of course, details few procedures for running foreign policy. It grants several specific and some broad powers to the president and Congress, leaving them otherwise free to cooperate or compete within a legal and political national-security gray area. As commander in chief, the president has plenary power to conduct war; even the fiercest critics of executive power do not seriously contend that Congress should issue orders to the U.S. military. Yet Congress has plenary powers of its own: to define offenses against the law of nations, to control the purse, and to enact rules pertaining to the conduct of government business.

These two branches may come into conflict. In the War Powers Resolution of 1973, Congress purported to forbid the president to deploy American troops in combat (or even into a combat-prone environment) for more than 60 days without legislative authorization, except in the case of an attack on U.S. forces. No president has acknowledged this resolution's constitutionality, and it persists in a legal limbo. But resolving conflicts of this sort in abstract legal terms is a fool's errand: The Constitution *deliberately* features built-in tensions to maintain checks and balances. In the end, policy will be set not so much by a branch *legally entitled* to do so, but by a branch—usually the presidency, but sometimes not—*politically positioned* to do so. This loose framework allows U.S. foreign policy to adapt quickly to changing circumstances without forcing the president into endless double-checking with Congress.

In laying out his analysis of the foreign-policy powers, Yoo rejects the academic consensus of the past 30 years, which has relentlessly emphasized the need for rigid deference to Congress and, often, to multilateral international institutions. This school of thought has enabled swarms of commentators and activists to brand foreign-policy actions they dislike—usually those that involve projecting American power overseas—as "illegal" and to frame foreign-policy differences as criminal-law violations.

Yoo begins by debunking the view enshrined in the War Powers Resolution that, except in self-defense, U.S. forces may not be sent into combat for more than 60 days without explicit congressional authorization. He argues that the Constitution contains "no textually mandated process for going to war," a claim that may shock readers used to extolling Article I's provision that Congress shall have power "to declare War." Yoo freely acknowledges that only Congress may *declare* war, but, tying his argument closely to the debates and practices at the time of the Framing, asserts that the power to declare war was conceived, not as a check on the executive, but as an authority to "define relationships and status under international law": to announce belligerent status, forbid commerce with an enemy, etc. This ritualistic aspect of the declaration of war is well captured in Winston Churchill's famous aphorism: "When you have to kill a man it costs nothing to be polite."

In the 18th century, open hostilities regularly preceded "declared" war by years. King George II, the last English sovereign to lead his troops in battle, defeated the French at Dettingen in 1743, nearly a full year before war with France was officially declared. Similarly, Major George Washington fought his celebrated action at Fort Necessity two years before Parliament "declared" the Seven Years War. In the minds of the Founders, then, "to declare war" had a meaning very different from "to authorize the use of force." As Yoo explains, the idea that Congress's power to declare war would be used to restrict the president's ability to send forces into combat "does not appear" in the debates of the Founding period.

Yet neither the Founders nor their parliamentary forebears were content to see the legislature rubber-stamp executive wars. The Constitution's original understanding held that Congress's real check on executive war powers lay, as had that of Parliament, in its exclusive authority to raise and spend funds, subject to conditions it chose to enact. In the words of James Madison to the Virginia Ratifying

Mr. Rivkin is a partner in the Washington, D.C., office of Baker & Hostetler, LLP, and a contributing editor to National Review. He served in a variety of legal and policy positions in the Reagan and Bush I administrations. Mr. Ramos-Mrosovsky is a student at Harvard Law School.

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Convention: "The sword is in the hands of the British king; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist."

Significantly, Yoo's explanation of the constitutional allocation of war powers fits American practice. Of more than 100 armed conflicts in which U.S. forces have taken part, only five—the War of 1812, the Mexican War, the Spanish-American War, and the two world wars—have followed a formal declaration of war. A few, notably the Vietnam War and the current operations in Afghanistan and Iraq, have been "authorized" by Congress. Yoo's analysis avoids the absurdly formalistic conclusion that all other U.S. wars—an assortment of colonial engagements, punitive expeditions, and nation-building operations—were unconstitutional. Under Yoo's theory, President Clinton's air campaign in Kosovo, which took place despite the House's refusal to vote an authorizing resolution, was fully constitutional. Congress could have stopped the war "merely by refusing to appropriate" the necessary funds. The implications for the War on Terror are clear: Presidential decisions to send troops into countries with which the U.S. is ostensibly at peace will not be vulnerable to charges of "illegality" merely because a declaration of war is absent.

Yoo's theory extends to treaties as well: "As a textual matter, the Constitution does not speak directly to the issue of treaty interpretation." The day-to-day running of foreign policy would be unworkable, however, without allocating decisions on treaty participation and interpretation to the president, with a limited role for the Senate. Nevertheless, Congress retains its power to use the purse to enforce its foreign-policy preferences. Thus, even after President Bush announced in 2001 the U.S. withdrawal from the 1972 Anti-Ballistic Missile (ABM) Treaty, Congress "could have forced U.S. compliance with the substance of the ABM treaty." Indeed, Congress repeatedly amended defense appropriations bills to limit the missile-defense work in ways that exceeded the ABM Treaty's reach as interpreted by the executive branch. Conversely, an administration can conduct diplomacy as if a treaty were in force, notwithstanding the Senate's refusal to ratify it. And Congress need not explicitly reject, which it cannot constitutionally do, the Bush administration's position that the 1949 Geneva Conventions do not govern the treatment of captured unlawful enemy combatants; Congress can, if it chooses, simply cease funding operations at Guantanamo Bay.

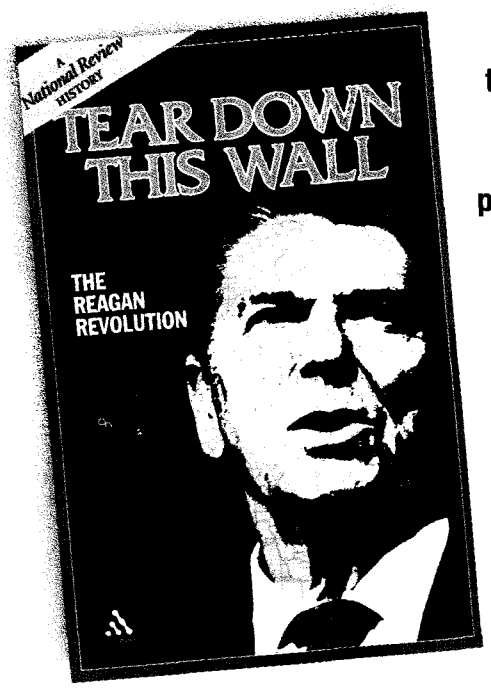
There is a refreshing elegance to Yoo's theory. Forgoing hair-splitting doctrinal debates about congressional and executive claims to primacy in foreign affairs, Yoo tells the two branches to duke it out politically, deploying their allocated powers to reach a political equilibrium. By shifting the debate from the legal to the political arena, Yoo's theory promotes frank discussion of the national interest and makes it harder for politicians to parade policy conflicts as constitutional crises.

Most important, Yoo's approach offers a way to renew our political system's democratic vigor. So long as Congress can block the president through mere inaction, responsibility will be diffused, and accountability fleeting. If, on the other hand, Congress must take affirmative steps to exercise its power of the purse, it will be more clearly accountable for the consequences; and a president who plunges ahead despite congressional unwillingness to fund his policy will bear a heavy burden of responsibility.

To be sure, Yoo's theory reinforces the executive's historical dominance over foreign policy. If Congress's power is ultimately limited to control of expenditures, a president will, in the final analysis, always be able to present it with a *fait accompli*, committing the U.S. to a course and daring Congress to undo it. Even the most hostile Congress will be reluctant to cut funds once troops are in the field. Yet presidential primacy in foreign affairs generally makes sense, given the need for a rapidly adaptable foreign policy. Yoo also correctly notes that "we should not mistake failure of political will for a violation of the Constitution": It is not unconstitutional for Congress to choose to acquiesce in a presidential foreign-policy decision.

An impressive scholarly achievement, *The Powers of War and Peace* should be read by anyone with an interest in constitutional law and foreign policy. By grounding the adaptable foreign-policy mechanisms needed for successful prosecution of the War on Terror in historical practice and the original understanding of the Constitution, Yoo's work helps build a constitutionally legitimate foundation for victory. **NR**

NR on RR



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The directors of the Institute cordially invite you to join them—along with the editors of NATIONAL REVIEW and many other distinguished conservative leaders—as they recognize and honor Bill for his many accomplishments and his profound impact on American politics and culture.

This will be a night to remember—a long overdue and richly deserved show of appreciation—that you will not want to miss, as we warmly wish "WFB" a most happy birthday and thank him for *all* he has done for the causes we most cherish. Seating for the NRI celebration of William F. Buckley Jr.'s 80th birthday is limited. To reserve your seat or table, please fill out and return the form below. For more information on this grand affair, please call 1-212-679-7330.

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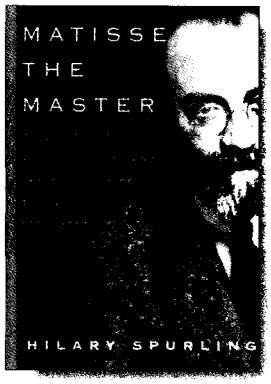
Seeing It His Way



Matisse the Master: A Life of Henri Matisse: The Conquest of Colour: 1909–1954, by Hilary Spurling (Knopf, 544 pp., $40)

JAMES PANERO

"THE creators of a new language," said Henri Matisse, "are always fifty years ahead of their time." Matisse insisted on seeing the world on his own terms—and that choice, which he followed dutifully and doggedly, put him at odds with just about everyone and everything in his native country: the theorists, the politicians, the establishment, the avant-garde, and especially his fellow artists.

Matisse was the 20th century's great colorist; this we know. But what we did not know, until now, is that the abundant joys in his work emerged out of an armored spirit. "What I want is an art of balance, purity, an art that won't disturb or trouble people. I want anyone tired, worn down, driven to the limits of endurance, to find calm and repose in my paintings." *Luxe, calme, et volupté*: For this France lined up against him.

These revelations are the take-away of the second volume of Hilary Spurling's life of Matisse, the sequel to her 1998 *The Unknown Matisse*. Matisse once described his paintings as "the energy of a drowning man whose pathetic cries for help are uttered in a fine voice." Such cries were ridiculed by the Paris art world when they were not simply ignored; the solace Matisse did find, outside of his work, came from collectors and critics in Russia, England, and the United States. (Late in life he regretted never relocating to New York, and encouraged American artists to stay put rather than come to Paris. The eclipsing of Paris and the rise in the 1950s of the New York School, which would be so influenced by Matisse, proved it was good advice.)

Spurling writes that "the longstanding, at one time almost universal, dismissal of one of the greatest artists of the 20th century as essentially decorative and superficial is based, at any rate in part, on a simplistic response to the poise, clarity, and radiant colour of Matisse's work that fails to take account of the apprehensive and at times anguished emotional sensibility from which it sprang." We now have two thoroughly researched volumes as a corrective to this failure—by a British biographer who eschews both academic nonsense and art-world prejudice.

Matisse begins Volume II in 1909 as a beast—a fauve—in the eyes of the French establishment. "Harmony—the goal Matisse desired more passionately than any other—was the last thing his art conveyed to his contemporaries. . . . [His work] violated every sacred Beaux-Arts precept enshrined in the flawless public nudes that filled the Paris salons." By 1954, Matisse is dismissed by a younger generation for having become a "spent force," lumped "with the reactionaries" because he refused to embrace the theories of the times. "From Bloomsbury's point of view, the wrong people liked him." In Lytton Strachey's *Eminent Victorians*, Matisse "emerges as a fictive monster of insufferable vanity, banality, and pretension." At one moment he is held in contempt "on the grounds that anyone not lined up alongside the Cubists or the Futurists [is] against them." At another, French Communists are promising, once in power, to turn his Catholic chapel at Vence, for which he designed the stained-glass windows, into a dancehall. Battered from all sides, Matisse almost never caught a break.

One has come to expect the story of modern art to be solid left-wing territory, but the evidence does not always bear this out. As uncovered by Spurling through an unprecedented array of primary sources, the story of Matisse is less Marxism than Reaganism. Matisse suffered for his politics, specifically because he had none: "Art for him had no political dimension." Matisse was driven by a temperament that was deeply conservative, deferential toward the art of the past. From Byzantium to North Africa to Old Believer Russia, not to mention Poussin, Courbet, Renoir, and Cézanne, Matisse cultivated the essential qualities of lost aesthetics. His colorist style, stitched together by pattern and ornament, became a personal art academy far more academic than the salon styles of Beaux-Arts.

Matisse did not carry on liaisons with his models; he painted them. He did not live *la vie de Bohème*; he moved his family to the Paris suburbs. In Tangier, "none of the standard forms of addiction or debauch could hope to match the risk and lure of painting." Matisse's drive to see his vision realized was often interpreted as madness by his contemporaries, and became a cause of desperation among his wife and children—his wife Amélie left Matisse in old age, finally broken by a lifetime of abandonment for art's sake. But Matisse was not fundamentally radical. He was, if anything, radically fundamental.

Matisse thoroughly repudiated the "international avant-gardes," group artists who terrorized talent when not painting by numbers. Cubist thugs were known to spray-paint anti-Matisse graffiti throughout Paris. (It should be noted that Picasso himself stayed above this; he knew Matisse was on to something, and he used their friendship to discover, for himself, what it was.) Matisse chose to work and live (in his words) "without a theory"—and, therefore, without a following.

The results left Matisse open to persecution, both political and aesthetic. In addition to his offence—at Vence—of aligning art with the Church, Matisse once said of the art wonders of the Soviet Union: "I'm ready to paint as many frescoes as you like, only remember, it's no good asking me to paint hammers and sickles all day long." At the turn of the century, when polite Parisian society was shunning this fauve, two Russian businessmen became active supporters of Matisse's vision. One of them, Sergei Shchukin, commissioned some of the master's best-known canvases, including

Mr. Panero is the associate editor of *The New Criterion*.

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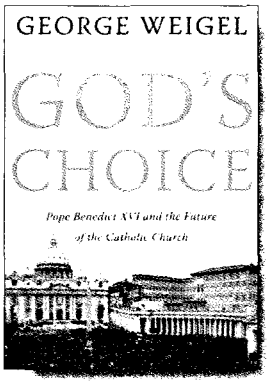
The Dance and *Music*. So well known was this collection in Russia that Lenin himself had it confiscated during the Revolution. The paintings were "designated a teaching aid to demonstrate the decadence and corruption of the West" before being locked away from public view entirely.

Regrettably, in her extraordinary coverage of Matisse's life, Spurling at times distracts us from his work. The real life of Matisse is what you find in his painting and sculpture. Spurling labors both to defend and to overcome the image of Matisse as a proper gentleman, but he was, in the end, a perfectly proper gentleman—one who created astonishing paintings. Where Spurling endeavors to describe every model who walked into Matisse's life, and every liaison that wasn't, the book runs long—particularly in the early chapters on the artist Olga Meerson. The narrative here also does not benefit from Spurling's at times florid language: "he responded like a man coming back to life again, or a lover receiving the advances of an irresistibly seductive mistress."

It is the highlights of Matisse's production—the Barnes murals, the Vence chapel, and the paper cutouts—that keep us on our toes. Confined by illness, Matisse spent his final bedridden years cutting and pasting bits of colored paper. What was thought to be madness led to some of his greatest work. This is the history of Matisse we must know.

Spurling's curatorial work may be the most rewarding aspect of her biographical research: To comprehend a great painter, one really must see the great paintings. Spurling obliged by creating an eye-opening exhibition at the Metropolitan Museum in New York, which ran this summer. Titled "Matisse, The Fabric of Dreams: His Art and His Textiles," the show paired Matisse's paintings with his collection of textiles—he was the son of weavers, born in a weavers' town in northern France. The results of this completely original show not only demonstrated the influence of textiles on Matisse's art, but suggested how the patterns and colors of textiles encouraged this artist to see the world his own way. Fifty years after his death, we are just learning to see it that way too. **NR**

The Right Man



God's Choice: Pope Benedict XVI and the Future of the Catholic Church, by George Weigel (HarperCollins, 296 pp., $26.95)

GEORGE W. RUTLER

The election of Pope Benedict XVI seemed both impossible and inevitable, and, after the white smoke had disappeared, the same observers who had assumed that age and controversy would block him would remark how logical the decision was. Some inhabitants of a universe parallel to reality stayed stupefied; the result silenced for dramatic seconds on network air one commentator who had broadcast that Ratzinger's chances were ruined by his homily before the Conclave. It may be that the future Pope had thought the same, for his denunciation of a "dictatorship of relativism" was like saying, "I don't want this, but if you insist, I want you to know what you'll be getting."

Pius XII was so emblematic of everything papal that he remained "The Pope" to many after the election of John XXIII, upon whose death it was generally thought that no one could outdo his act in history. This almost seemed the case during the hand-wringing melancholia of Pope Paul VI's reign. After John Paul II was gathered "to the Father's house," the refrain went up again, "There'll never be another." Within months, Benedict XVI was blessing the largest gathering of youth the world has seen, and a recent general audience broke all attendance records. Every Pope knows how fast the flax of popularity can burn, and also knows that if he were the only one to show up, there would be the Church.

George Weigel's *Witness to Hope* interpreted John Paul II to great numbers of readers worldwide. The first hundred pages of this book about Benedict are about John Paul. It did not take that long for Elijah to cast his mantle over Elisha, but in truth each is a code to the other. Weigel teases the historical muse by calling John Paul II "the Great" and one waits to hear how that will resonate in a few years. What Weigel calls "The Church that John Paul II Left Behind" in some ways was never finer and in other ways never more troubled. But Weigel becomes brilliantly concise when he shifts gears, the change in syntax matching the change in papal personalities.

As the new Pope's age did not thwart him (Ratzinger was in fact little more than a year older than John XXIII had been at his election) and may in fact have been in his favor, so did his outspokenness gain the votes of cardinals who, like Chesterton, did not want a Church that moves with the world but a Church that will move the world. And here Weigel takes on the new Pope's challenging persona; some of what follows in the next two-thirds of the book may be received as the most provocative things he has published.

What Weigel calls John Paul's "least impressive social encyclical," the 1987 *Sollicitudo Rei Socialis*, was the camel put together by a committee, the result of "a tortuous process of consultation between the papal apartment, the Pontifical Council for Justice and Peace, and other curial offices." It was symptomatic of a bureaucracy immensely inflated in the pontificate of Paul VI, and that John Paul II did not trim, as his mind was on other things. The big picture must come first, for without vision the people perish, but God is also in the details. Benedict XVI has a mind for both. He has the advantage of having seen the Vatican for a long time from the inside. By refusing Ratzinger's repeated requests for retirement, John Paul II may have recognized an intellect even sharper than his own. In some of the writings of John Paul, a form critic would detect the influence of Ratzinger's sudden bursts of clarity.

As a young theologian at Vatican II he

Fr. Rutler, a Catholic priest and the author of many books, is pastor of the Church of Our Saviour in New York City.

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enthused for "ressourcement," the return to a patristic sense of the sources of Christianity that he hoped would box the compass for an "aggiornamento" to make Christ understood by a generation shaken by seismic anthropological shocks. Ratzinger had a gift for discernment that many of his academic colleagues did not. They were like Left Bank intellectuals who say, "That may be good in practice but how is it in theory?" Most of them who are not dead are now pouting in universities and renovated convent parlors, wondering why a world that has passed them by has not caught up with them. Some of them began a journal, *Concilium*, that labored in the belief that Vatican II was a new Pentecost more interesting than the first. (They simply misread Thomas More on the etymology of "Utopia.") When Ratzinger saw through their half-baked Kantianism, concluding that they had detached "aggiornamento" from "ressourcement," he helped launch an alternative to *Concilium* called *Communio*, which today is published in a dozen different languages, and attracts the best minds.

This ended Ratzinger's friendship with such as Hans Küng and Karl Rahner, although one of his first papal acts was to invite Küng to visit, with no illusions about doctrinal accord. As chaos in the universities reached a kindling point in 1968, his move to a more serene academic environment in Regensburg was to find a solid place for an Archimedean lever to move the world. There may be no German expression equivalent to "steel magnolia," but there was no softness in the aesthetic integrity of Ratzinger—which must have caused him much suffering as he witnessed the moral ugliness and liturgical vulgarity of recent years.

The kind of reader who checks out the last pages of Agatha Christie first may start with Weigel's end chapters on reform of the episcopate and curial structures. If the response of many bishops to the scandals of the present time resembles the beclouded French bishops before 1789, it is in part because bureaucracy and legalism lack Ratzinger's perception of man: "If there is no longer any obligation to which he can and must reason in freedom, then there is no longer any realm of freedom at all . . . Morality is not man's prison but rather the divine element in him."

Weigel makes the case for reform in the appointment of bishops. Understatement sweetens but does not dissolve his palpable disdain for the cataleptic exhortations of Vatican departments, or "dicasteries," and he proposes realignment of those Pontifical Councils and Commissions that popped up after Vatican II like the bureaus of the New Deal. He sees anything but Augustinian realism in the Second Desk of the Vatican State Department's idealist analysis of much of the world scene, especially the United Nations. If necessary in a fallen world, diplomacy is dangerous work: Only one of the twelve apostles was a diplomat, with fatal consequences. Catholic wisdom is ill served if it adopts the voice of a naïve governess calling for a nanny state, indulging a sort of Jesse Jackson doggerel in portentous-sounding calls for "the force of law rather than the law of force." Weigel is not the only man in the world offering advice to the Pope, but he is rare in the perception and prudence with which he does it. Whatever comes of the new pontificate, it is reasonable to think that whole generations will say of Benedict XVI what a senior Vatican official said one week after his election: "What an exquisite person." **NR**

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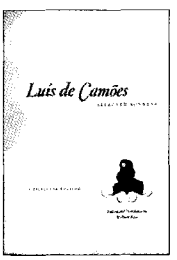
■ BOOKS IN BRIEF ■

Selected Sonnets: A Bilingual Edition, by Luís de Camões, edited and translated by William Baer (Chicago, 176 pp., $26)

LUÍS DE CAMÕES (1524–80) was a violent and even criminal adventurer who was fortunate to live to write his epic *Os Lusiadas* (1572) and a large number of superb Petrarchan sonnets, a selection from which is ably translated in this bilingual edition by William Baer, a frequent NR contributor. This volume is a worthy successor to Baer's *"Borges" & Other Sonnets* (2003). It is necessary to add that it has been splendidly produced by the University of Chicago Press, with illustrations from the period.

Camões was admired by writers from Cervantes through Wordsworth and Elizabeth Barrett Browning, and it seems odd that he—a Renaissance adventurer connected with art—did not turn up in Pound's *Cantos* along with Odysseus; the anonymous poet of *El Cid*; Malatesta; and other heroes.



Camões was probably born in Lisbon and educated at the great University of Coimbra, but in spirit he followed the hero of his *Lusiads*, Vasco da Gama, whose 1497–99 voyage around the Cape of Good Hope to India limned a Portuguese trading empire that reached halfway around the globe, from the Amazon in the West to the Moluccas in Indonesia, Macao in China, and Goa in India, the administrative hub in the East. Camões was banished for dueling and brawling at the Portuguese court, lost an eye fighting the Moors in Africa, was shipwrecked off the coast of Cambodia, swam to shore with the manuscript of his epic, was imprisoned in Goa, and was exiled to Mozambique. In 1580 he died of the plague.

His *Lusiads*, one of the great Western epics, is available in several translations; and now William Baer brings his sonnets forward as accomplished, indeed often beautiful, examples of this Renaissance invention. Put on an Amália Rodrigues fado recording and enjoy Baer's translation of Camões's sonnet "Como quando do mar tempestuoso," on this page.

—JEFFREY HART

Semper Fi: The Definitive Illustrated History of the U.S. Marines, by H. Avery Chenoweth and Brooke Nihart (Main Street, 480 pp., $29.98)

HELMETS off to this fine book. If ever an institution merited a definitive tome, it is the Marine Corps. Authors Chenoweth and Nihart have succeeded in amassing a history that presents the USMC in all its 230 years of deserving glory. And gore: Warfare and death, from the Barbary Coast to Wake Island to Fallujah, are at the Corps' core, and are captured in this informative, well-designed, strapping (seven pounds!) paean to all things Leatherneck. Teeming with colorful illustrations and engaging sidebars—military art, maps, battle photographs, recruitment posters, uniforms, campaign accounts, medals, insignia, weaponry, and the like—the book fascinates, and humbles. The bios of Medal of Honor winners give one pause; to think there are men so brave.

This book is *the* gift for every Marine—or wannabe Marine, of whom there are millions.

—JACK FOWLER

The West's Last Chance: Will We Win the Clash of Civilizations?, by Tony Blankley (Regnery, 256 pp., $27.95)

DOES militant Islam's challenge to the West rise to the level of an existential threat, on the order of fascism and Communism; or is it a lesser danger, one that will yield to the solvent of conventional geopolitical thinking? Tony Blankley, editorial-page editor of the *Washington Times*, argues persuasively for the first alternative. Particularly startling is Blankley's description of culturally insecure Europe's transformation by Muslim immigrants who demand, with increasing boldness, that the West conform itself to their sensitivities. The worst-case scenario would be a "Eurabia," governed in part by sharia, that actively undermines U.S. strategic interests. Blankley proposes several tactics to counter the threat, some of which are obvious ("utilize ethnic profiling") and others vague ("win the European culture war"). The book's value lies mainly in its portrait of the danger. Blankley's prognosis is cautiously optimistic; he suggests that "the historic force of the Islamist insurgency . . . should hammer us back into a common sword that we can call the West." One hopes so, and suspects that the publication of his book has made that outcome slightly more probable.

—JASON LEE STEORTS

SHIPWRECK

Like the weary sailor, the refugee
from wreck and storm, who escapes half-dead,
and then, in terror, shudders with dread
at the very mention of the name of the "sea";
who swears he'll never sail again, who raves
he'll stay at home, even on the calmest days,
but then, in time, forgets his fearful ways,
and seeks, again, his fortune above the waves;
I, too, have barely escaped the storms that revolve
around you, my love, traveling far away,
vowing to avoid another catastrophe,
but I can't, the thought of you breaks my resolve,
and so, I return to where, on that fateful day,
I nearly drowned in your tempestuous sea.

—LUÍS DE CAMÕES
translated by William Baer

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■ MUSIC ■

A Little Hit

JAY NORDLINGER

Have you seen *The Little Prince*? I'm not talking about the big-screen musical done by Lerner & Loewe (1974). I'm not talking about the Claymation short, narrated by Cliff Robertson (1979). Nor am I talking about any of the other movie or TV versions of Antoine de Saint-Exupéry's classic. I'm talking about the opera, composed by Rachel Portman two years ago. Her *Little Prince* is a little hit, and it will occupy the stage of New York City Opera in mid-November.

It was originally commissioned by Houston Grand Opera, commissioner of a great many works. And when it made its splash, it was televised by the BBC. Opera on television (and new opera at that)—just like the old days!

Portman is an Englishwoman, the composer of numerous film scores. In 1997, she won an Oscar for *Emma*. In 2000, she wrote the score to *The Legend of Bagger Vance*, a lousy golf movie based on a wonderful golf novel. In any case, Portman has ample experience in how to tell or enhance stories through music.

The Little Prince is one of many recent operas to take advantage of a beloved text. Of course, this has been a trick of composers from earliest times (Monteverdi went Greek). In 1998, Mark Adamo set *Little Women*, and that opera has been seen all over the country. Next spring, New York City Opera will stage Adamo's newest opera, *Lysistrata*. (He went Greek too.) What you can almost call a mega-hit is Jake Heggie's *Dead Man Walking*, composed in 2000. "You loved the movie; now see the opera," went the joke. In 2004, Heggie adapted *The End of the Affair*.

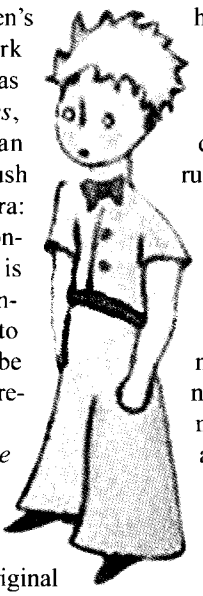
What else is out there? Last May saw the premiere of Lorin Maazel's *1984*. Six years ago, the Metropolitan Opera unveiled John Harbison's *Great Gatsby* (a review of which ran in these pages: "The Okay *Gatsby*"). William Bolcom has turned to Arthur Miller for *A View from the Bridge* (1999) and to Frank Norris for *McTeague* (1992). In 1998, André Previn did *A Streetcar Named Desire*.

And they never tire of Shakespeare, do they? Lee Hoiby has done both a *Tempest* (1986) and a *Romeo and Juliet* (2005). The latter is not yet scheduled for a premiere, but it ought to be: The excerpts I have heard are appetite-whetting.

Next month, the Metropolitan Opera will present another new opera: Tobias Picker's *American Tragedy*, based, of course, on the Dreiser novel. Come to think of it, *Sister Carrie* would make an excellent opera, too—imagine the title role!

But back to *The Little Prince*, and Rachel Portman. On one hand, to select this tale for an opera is a no-brainer, because audiences come knowing the story, and cherishing it. On the other hand, what if you mess it up, angering the *Little Prince* public? Portman did not mess it up. She has written a children's opera, but it's an opera that anyone can enjoy—same as one and all enjoy *Amahl and the Night Visitors*, especially at Christmastime.

As long as we're talking about recent opera, I might as well mention that Charles Wuorinen wrote a children's opera, premiered at New York City Opera last season: That was *Haroun and the Sea of Stories*, based on a novella of Salman Rushdie. Actually, I should blush to call *Haroun* a children's opera: It may involve children, and contain touches of whimsy, but it is fearsomely modernist, Wuorinen-esque. I doubt it would appeal to any child—that would have to be one weird (and impressively cerebral) child.



You can find *The Little Prince* on CD or DVD (from Sony and the BBC). The opera's starring role, fittingly, is the title role, and it is for boy soprano. The original cast happened to have a superb one—a British kid named Joseph McManners, born in 1993. This is an exceptionally demanding role, the Little Prince: He is onstage for the whole two hours of the opera, and he's singing for much of that time. Whenever this work is staged, a terribly gifted, terribly mature boy will have to be found. Let's hope that supply is not a problem.

Portman's score is as it should be: simple, small-scale, tuneful. It comports with Saint-Exupéry's words, and also with his drawings, which impress on the memory maybe even more than the words. There is a transparency about this score, and at times it is almost French, in its delicacy. In addition, there's a lot of flying around in Saint-Exupéry's story, and Portman is good at flying, musically. That is almost a precondition for taking on this task.

Saint-Exupéry invented many creatures and characters, so Portman has many opportunities for musical portraiture. Remember the Vain Man, who must constantly hear applause? From Portman's pen, he is marvelously ridiculous. And the Drunkard is marvelously drunken. As for the Businessman, he is coldly calculating—literally so, as he tallies up his sums on an adding machine (rat-a-tat). The Hunters are both menacing and buffoonish.

I might note that the Businessman and the Hunters are the obvious bad guys in the opera—just like in Hollywood!

Outstanding in Portman's score are her choruses, which are well-crafted, affirming, and close to irresistible. These are the bits you sing as you leave the opera house, or turn off your stereo (or DVD player).

In my judgment, Portman is best when she is depicting the funny or quirky characters, and in those choruses. She is weaker in the love music, or in the reflective music—the philosophical music, you might say. She can be sentimental, treacly, or insipid. What's more, the second of the two acts feels slow to me, flirting with a stasis, a dreaminess that is too sleepy. But there's no doubt that Rachel Portman has achieved something. Even composers who may snicker at this opera probably wish they'd written it.

These days, you hear a lot of whining that contemporary opera gets no breaks. How far we are from the good old days! Well, plenty of new opera is about, and I'll tell you something about the good old days, too. Or rather, I'll let the Met's general manager, Joe Volpe, tell you. In an interview with me two years ago, he said, "When Gatti-Casazza ran this house [1908–35], composers would come in off the street, shove a manuscript into your hand, and say, 'Here's an opera. Wanna put it on?' They didn't start with, 'First give me $350,000, then . . .'" I'm not sure that much of what we hear these days is worth that. $150K, maybe. **NR**

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■ FILM ■

Shadow War

ROSS G. DOUTHAT

Do anti-war movies really exist? This was one of the more interesting questions raised by *Jarhead*, Anthony Swofford's memoir of the first Gulf War. To his fellow Marines, he suggested, even the "Vietnam war films are all pro-war," seducing soldiers with "the terrible and despicable beauty of their fighting skills." On the eve of shipping off for Iraq, Swofford and his comrades-in-arms fired up the VCR and roared their unironic approval at *Full Metal Jacket* and *Apocalypse Now*, *The Deer Hunter* and *Platoon*, the anti-war message lost in the deadly glamour of combat.

That scene shows up midway through Sam Mendes's lovely, pointless film adaptation: Francis Ford Coppola's helicopters strafe the Vietcong while "Ride of the Valkyries" blares and the Marines, the close-cropped jarheads of the title, stand and cheer the carnage on. It's a potent moment, but the movie feels trapped by it—by the suggestion that anything ***Jarhead*** might say about war has already been said, and already incorporated into the culture, and the cult, of military combat. Movies once celebrated battle, and later they deplored it, but war itself has proven too strong for both these idealisms, too dark to glorify and too attractive to condemn. *Jarhead* tries to tack between these exhausted alternatives, but it's a movie that doesn't know its own mind, that fancies itself complicated because it doesn't have anything to say.

It doesn't help that Swofford's story proves thin material—it's the memoir of a week-long war, in which the waiting is the hardest part (metaphors of ejaculation and impotence abound) and the details of Marine life are more interesting than the brief spasm of combat. The book had literary flair, at least, and the novelty of an author who went from the Marine Corps to the Iowa Writer's Workshop; the movie, alas, has Jake Gyllenhaal. Playing Swofford, Gyllenhaal is handsome in the wounded fashion of a male model; he bulked up for the role, but it only makes him look absurd, a Hollywood man-child on steroids. In a movie where so little happens, the only drama is necessarily existential—and watching Jake Gyllenhaal stare into the abyss would make Kierkegaard giggle.

The supporting cast has its pleasures: The always-able Peter Sarsgaard plays Swofford's friend and mentor on the Marine sniper squad (though it would have been interesting to see what Sarsgaard could have done with the lead role), and Jamie Foxx strides through and swipes the movie with a cool, sympathetic turn as Swofford's commanding officer. And the film is beautiful—the white desert and the flaring orange of the oil wells set ablaze, and the awful beauty of a strafed-out highway, the cars gray with ash and the corpses like statues carved in charcoal.

But as in his previous efforts, Mendes shows a filmmaker's eye and little else. *Jarhead* is the most entertaining movie he's yet made, in a way; it lacks the rancid heart of *American Beauty* and the glossy emptiness of his gangster flick, *Road to Perdition*. But it delivers clichés and rarely complicates them—the stock drill sergeant with his stock insults; the banter and rough-housing of the platoon; the infidelity of stateside girlfriends and the homoeroticism of military life; the pulsing soundtrack and the "let's kick some ass" thrill of armed men on the move. When it reaches for pathos and moral complexity, *Jarhead* comes up short; when it retreats into crowd-pleasing, it carries all the weight of a Marine Corps advertisement.

The Marines need recruits, of course, but a movie about the first Iraq War should offer more than this. Gyllenhaal's Swofford advises us, at one point, to forget about politics—but this is dishonesty masquerading as realism. In war, politics always matters, and it's worth contrasting *Jarhead*, in this regard, with David O. Russell's *Three Kings*, a movie that limned in a few broad strokes what Mendes takes two hours to arrive at—the strange virtual-war quality of the first Gulf War—and then went on to grapple with the complexity of the war's aftermath, the Shiites and the Saddam loyalists and the well-meaning Americans caught in the middle. You didn't have to agree with Russell's politics—an anguished liberalism, torn between pacifism and interventionism—to enjoy his movie, because he had something to say about our liberation of Kuwait, about what it meant and didn't mean, what it did and what it tragically failed to do.

Whereas Mendes has only the beauty of the desert, the sweat of the Marines, and the deadly sleekness of their weapons: the pornography of a war without its point. **NR**

Mr. Douthat is the author of *Privilege: Harvard and the Education of the Ruling Class*.

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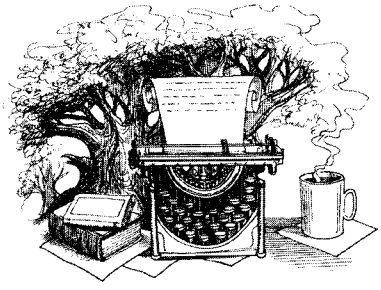
■ COUNTRY LIFE ■

Timber!



RICHARD BROOKHISER

A TREE fell in the forest, and I heard it. This is the sound it made.

First came a dry rushing of leaves and light branches against other leaves and light branches. Second-growth woods in the Catskills do not have a canopy as dense and gaudy as the rainforest, but the trees all shoot up to about the same height, maybe fifty or sixty feet. Since they grow tightly together, the winners in the race for the light lose most of their lower limbs and resemble immense broccoli spears. The rush was the noise of a section of canopy slipping out of place.

Then came a tremendous crack. The tree was toppling over from its roots, so its own trunk did not split. But as it fell, it caught a big limb—really half of another tree—that crossed the arc of its descent. Imagine if you slipped on the ice and, in grabbing your companion's arm, pulled it off at the shoulder. The sound was like snapping a Brussels sprout off a stalk, if the sprout were the size of a Mini Cooper.

The final sound was the boom of arrival. Now I lay me down to sleep. It was not pure enough to produce a tone, but it had a true bass timbre, probably enhanced by vibrations that I was close enough unconsciously to feel.

Russsh—*crack!*—BOOM. It all took maybe three seconds.

Since it all happened in the dark—I was grilling dinner on the deck—some of the explanatory details are morning-after inferences. The night-of I grabbed a flashlight and walked toward the departed sound. At the edge of the tree-line I encountered a Medusa mass of branches and leaves. Dawn disclosed the story. I had noticed this particular tree as not long for this world, since it seemed to me to be growing at an unsustainable angle. In life I had not identified it—its leaves were too high up for me to see distinctly, and its nuts (for it was a nut tree) were immediately harvested by squirrels. It turned out to be a butternut, about sixty years old, fifty to sixty feet tall. It took a big chunk of a maple with it, perhaps forty feet long. I was not looking at a quick clean-up.

My friend Doug, who follows all local events from town gossip to turkey flocks, took the first step, coming over midweek with his Swedish chainsaw. He cut the "upper" (now it had to be put in quotation marks) branches and moved enough of them aside to give himself access to the trunks, which he then sliced into logs. The chainsaw, more ruthless than any special prosecutor, revealed rot in the butternut, which no doubt hastened its fall. There might be a quarter of a cord of wood there, but that was still several steps away.

The next step was mine. I first pulled out all the branches, and stacked them in a pile. The task was a lesson in patience and the efficacy of small steps. If a branch wasn't moving, you removed lesser branches from above and alongside it until it did. The work was forcefully delicate—a combination of careful unweaving and tugging. Moving the sawed sections of the trunks and stacking them in another pile was mere force, without the amenities of a gym. You can put a lot of weight on an incline press, but you always have handles. This was dead-lifting masses. The maple was twice as heavy as the butternut—another secret revealed by destruction.

The third step was a joint operation. Doug brought over his trailer, his chainsaw, and his log splitter. The last is a gas-engine machine with a shaft and a backstop; the splitting is done by a wedge that moves along the former towards the latter, with a force of 31 tons. You put a log on the shaft and let the tons do their work. Some logs split as easily as bananas; on others, the bark buckles. Still others have knots or crotches, and the log splitter shows its stuff. We flung the slices as they fell into the trailer, then drove them across my yard to the woodpile. The larger branches didn't need to be split—they were already a usable diameter—so we made another trailer-load of logs with the chainsaw. Later I carried the smaller branches off to the brush pile myself. I will never be a woodchuck, nor yet is Doug (he moved to the country from Brooklyn when he was eight), but I have an appurtenance of woodchuck life—a brush pile.

All this was finished a few weeks ago. Orion has begun to throw his leg over the hill at midnight. Very soon it will be cold enough for the butternut to arrive at the next stage of its journey—the fireplace. One Sunday just as we were about to go back to the city, a car came down the driveway. One of the passengers was the daughter of the man who built the house, sixty years ago, as a hunting cabin, and gradually improved it. He was a stonemason, and he had made the chimney—a beautiful thing with a huge bore. The heat shoots straight up into the night, but it draws like a sleeping baby, and it is hypnotic. We call it fire TV. Like real TV, it is always the same, and unlike real TV it is always interesting.

Ashes go out to the compost, not far from where the butternut fell. I view the constant shoveling of compost as a duty, but my wife loves it. She sees it as a science project for adults, or a magic trick. The compost goes onto the vegetable garden. What we don't eat goes right back, as leaves and stems. Maybe sixty years from now, if the people who own the place then do their composting elsewhere, it will help fertilize another tree. NR

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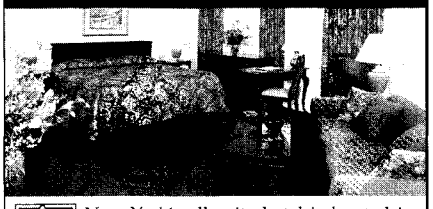

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on the right

WILLIAM F. BUCKLEY JR.

Unbridled Critics

THESE are indeed rough days for the Bush administration, but critics have a difficult time harmonizing their arguments with history and common sense. The central question for Mr. Bush—more so even than the fate of Harriet Miers—has to do with Iraq, and the debate seems to be hardening on the underlying question: Can one country reasonably set out to democratize another country? Critics of the Iraq operation are leaning hard on theoretical arguments, as for instance Gen. Brent Scowcroft. He was speaking to Jeffrey Goldberg of *The New Yorker* and seemed eager to depict, and perhaps even to dramatize, his differences with the Bush administration, all the more difficult because, historically, Bush GHW is Scowcroft's closest friend, and the object of current dissatisfaction is Bush GW.

Scowcroft has had no exchanges with Condoleezza Rice, he says, since a dinner two years ago. They argued about Iraq. "She says we're going to democratize Iraq, and I said, 'Condi, you're not going to democratize Iraq,' and she said, 'You know, you're just stuck in the old days,' and she comes back to this thing that we've tolerated an autocratic Middle East for 50 years." Goldberg reports, "Then a barely perceptible note of satisfaction entered his voice, and he said, 'But we've had 50 years of peace.'"

A White House spokesman, called to comment on this assertion, said it was "odd." "If you consider a) America's 1991 war against Iraq (which Scowcroft favored); b) the Iraq–Iran war (in which there were a million casualties); c) the conflict in the early 1970s between Jordan and the Palestinians; d) the civil war in Lebanon; e) the four wars between Iraq and Arab nations; and f) the attacks of September 11, 2001 (which were carried out by Islamic radicals who emerged from the broader Middle East)"—that's something less than 50 years of peace.

General Scowcroft uses intemperate language. You don't have to believe that Iraq is ready to pass Good Housekeeping tests of political and civic virtue, but we should weigh that some changes have simply been made. Saddam Hussein is not sitting in one of his 170 palaces; he is being tried in a little courtroom for his life. The transition was effected without mammoth effort—what was difficult came later. But critics generalize, and General Scowcroft advised that "the bad guys" always win out. That gloomy assessment provoked from the White House dissenter a calm demurral, and a little banner of historical hope for the democratic forces. "In fact in many elections, in Spain and Portugal, Nicaragua and El Salvador, the Czech Republic and Romania, South Africa and the Philippines, Indonesia and Ukraine, Afghanistan and Iraq," progress would appear to have been made toward freedom.

The critics face also a problem which goes widely unnoticed, and to which so much is traceable. Consider the furor over our agent in Niger.

The vice president is informed that agents of Saddam Hussein are looking in Niger for "yellowcake" useful in the manufacture of nuclear weapons.

We need to brace ourselves to follow the critical narrative here. a) An investigation proves there was no uranium mischief going on. b) This grievously disappoints the Cheney go-to-war clique, so much so that they disrobe the lady diplomat, revealing that she was really an agent of the CIA. c) Which in fact proves—nothing, and is interpreted as bureaucratic retaliation to the carrier of unwelcome news. d) But the no-yellowcake news does not arrest the rhetorical momentum. The president and his ideological establishment are (the critics insist) determined to find a casus belli to move militarily against Iraq.

What is unexplained is why should it be the ultimate ambition of the president and his team to go to war in Iraq? The evil of Saddam could have been bottled up in greater Mesopotamia. Bush and Cheney did believe that Iraq was acquiring weapons of mass destruction, and did plead this position in getting congressional and public sanction for the war.

Let us feel free to be angry and resentful at the misinformation from our intelligence agencies. But what is it that caused them to generate charges about the military menace of Iraq? When the U.N. detachments and then the invading forces looked about behind the apple trees for evidence of weapons of mass destruction, was that search purely cynical? Did they know that they were looking for things that weren't there? How do you explain that? Because they were so anxious to prove that Iraq was a regional menace?

But again—why set out to prove the unprovable?

The critics need to submit to the discipline of reasonable logic.

To Die Legally

THE Supreme Court gave visitors a chance to ogle in action the new chief justice. The arguments being heard had to do with Oregon's assisted-suicide law. The law was established by referendum in 1997. In an earlier referendum voters had marginally approved the practice; the second time they did so overwhelmingly (60–40). But the federal government intervened. It said to Oregon: "You can't do that! We feds passed 35 years ago the Controlled Substances Act, and that means that only we can authorize what your assisted-suicide law would permit."

The argument everybody is interested in lay deep in the thicket of laws and regulations and constitutional interpretations being touched on. Justice Roberts raised his voice for the very first time in his capacity as chief justice, asking the U.S. solicitor general, who was arguing to invalidate the Oregon law, for one example of the attorney general's overriding state medical practices. The solicitor general replied with an example involving the Food and Drug Administration. Roberts snapped, "That's the FDA."

Justice Roberts was endeavoring to unearth precedents that would illuminate the possibility of federal intervention in the Oregon case. The Controlled Substances Act gives the federal government authority to govern traffic in listed drugs, overriding state authority. Lame-duck justice Sandra Day O'Connor asked the

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solicitor general teasingly whether the Controlled Substances Act could be used to prevent lethal injections in capital punishment . . . How about allowing states to use steroids for bodybuilding?

And so it went. What engaged listeners wanted to hear about was—assisted suicide. Is it permissible to stand by while suicides are expedited by members of the medical profession? If the practice is hypothetically legal, can individual states—Oregon—authorize it?

It is interesting that the Oregon law is no longer a hot political issue within Oregon. When the second referendum in 1997 heavily registered popular sentiment in favor, skeptics tended to drop the subject. So the practice exists, but it is invoked minimally. The fear that thousands would have recourse to it to put an end to great pain proved groundless.

The practice in the Netherlands is constantly examined. There, for 20 years, assisted suicide has been routine, though critics point to evidence of its abuse. One begins with the basic question: Did the patient who asked the doctor to administer a mortal dose really wish to die? Did he/she wish to die because of insufficient awareness of alternative, palliative measures? Did the suicide-bent have as much information as was available about hospice care, which might have affected the despairing call for a death-doctor?

The haunting fear is that the sheer convenience of accelerating death can marginally influence medical counsel and medical action. A mortal dose of the right medicine, records indicate, costs $35 to $50. The contrast with the huge cost of institutional care is vivid. And then, if the Supreme Court rules that Washington does not have the authority under existing legislation to interfere with the judgment of the voters of individual states, will this precipitate similar action in other states?

What is absent from administrative contentions is clear moral mandates. Most religious faiths proscribe intervention designed to bring on or even to hasten death. Most "early" deaths, observers point out, are effected by declining treatment. To refuse bread and water, which is an act of suicide, is proscribed; to refuse radiation is not. To invoke professional help in accelerating the advent of death is the line the Oregon voters have attempted to take. Next spring we will learn whether the Supreme Court permits this license to state voters.

Home, Dear Home

The real-estate boom is a familiar phenomenon. Most people are predicting that it will, if not burst, at least wilt. But the basic components aren't going to change, not unless we have a catastrophe of sorts, something economists don't feel obliged to integrate into their speculations.

The components are: a relatively wealthy community; the hard desire to own one's own house, along with the ambition to make it more and more comfortable and pleasing; the dependence of building sites on immediate amenities (sewage, power); and strategic sources of nourishment (jobs).

Jon Gertner, writing for *The New York Times Magazine*, gives a useful account of the home-building industry. Here are some basic indices. We have 34 million rented apartments at this point and 74 million owner-occupied homes. The pool is being fed by immigrants seeking houses, by children growing and seeking their own homes, and by the elderly wanting a second house in which to vacation or retire. The home-building industry has constructed about 13.5 million single-family homes since the mid-1990s.

So why is the cost of housing so high?

We learn that the average new house nationwide now sells for nearly $300,000. The writer tells us, "I asked [a builder] what our children—my kids are both under 8, I told him—would be paying when they're ready to buy.

"'They're going to live with us until they're 40,' [the builder] said matter-of-factly. 'And when they have their second kid, then we'll finally kick them out and make them pay for the house that we paid for. And that house will cost them 45 to 50 percent of their income.'"

Such data are dismaying, but perspective helps. "In Britain," the builder explains, "you pay seven times your annual income for a home; in the U.S. you pay three and a half." The Brits get 330 square feet per person in their homes; Americans, 750 square feet. But choice parts of the U.S. face "build-out." Consider New Jersey. It currently averages 1,165 people per square mile—denser than India (914) and Japan (835).

And we confront, finally, the question: What is to be done about it?

Almost without exception, housing specialists concur, high home prices are owing to zoning. Twenty years ago, in many quarters of the country, one year would go by before the political authority would permit a developer to begin housing construction. In New Jersey, that interval now approaches eight years.

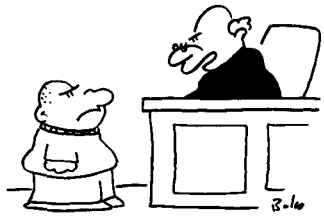
This is a politically remote source of trouble. People who have to wait for a zoning agency to change its regulations, traditions, and idiosyncrasies will be very old before they acquire a new home. Henry George, the social philosopher of a century ago, turned the attention of economists, however briefly, to the indefeasible factor of land scarcity. Capital and labor can increase; land cannot.

Accordingly, George was the apostle of the single tax. It aimed most directly at land speculators. His insights would focus now on the limitations on the use of land imposed by zoning. If John Jones wants an acre protecting his house, he is laying claim to something that cannot expand in size. Since land, in George's analysis, is forever limited, it must be treated as common property. And therefore the rental value of one acre should constitute a tax (the single tax) on the person who sequesters it for himself.

A strong case can be made for the amenities of zoning laws. But they have an effect on the availability of housing, and on its cost. One result is that housing costs are increasing faster than inflation.

But is the Henry George factor likely to be espoused in political platforms? It cannot happen soon because too many interests are vested in zoning laws. But sharp political eyes should be trained on the question, in search of a viable formulation designed to fight against homelessness for grandchildren who cannot be expected to pay the projected cost of housing.

—Universal Press Syndicate



"Diversity does not include bank robbing!"

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happy warrior

MARK STEYN

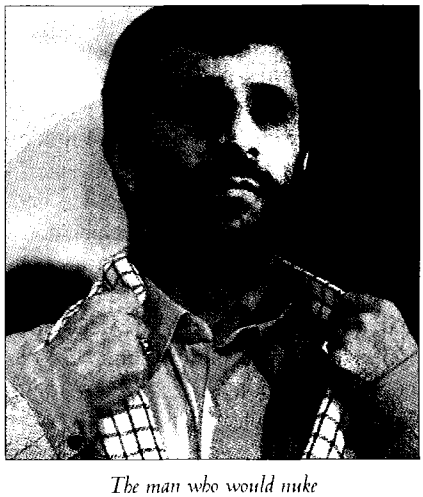
Meanwhile, Back in the Real World . . .

SUPPOSE a guy yells "Fire!" in a crowded theater, and the audience hisses back, "Shh! We're in the middle of a play about how Bush engaged in a massive conspiracy to use a small chimney fire as a pretext for burning down some other theater three years ago."

That's pretty much what happened the other week. The president of Iran announced that Israel "must be wiped off the map"—and the entire capital city of the world's hyperpower hissed back, "Shh! Patrick Fitzgerald's about to indict Scooter Libby!" Insofar as I understand the Left's three-year investment in Joseph C. Wilson IV, it's that the selfless patriot exposed the Bush administration's rationale for the war—Saddam's WMD—as a lie cooked up by a cabal of sinister neocon warmongers (Clinton, Gore, Kerry, etc). Just for the record, WMD was never my rationale. As I've said on many occasions, when it comes to toppling dictators, there's no such thing as an "illegitimate" rationale. In his obstruction of U.N. weapons inspectors, Saddam certainly acted as if he had WMD and, in his "trade" missions to Niger (principal exports: uranium, goats, cowpeas, and onions), as if he were eager to acquire more. There's something to be said for taking a chap at his word.

Anyway, we now have a chance to go through the whole rigmarole with another four-letter Middle Eastern Muslim country beginning with the letters "I-r-a." Same great runaround, new closing consonant. President Ahmadinejad made his wiping-off-the-map remarks during a conference called "A World Without Zionism," so it seems unlikely this was one of those subtle nuances lost in translation. Furthermore, in the final round of last June's presidential election, both candidates were eager to annihilate the Zionist Entity—Mr. Ahmadinejad's opponent, Hashemi Rafsanjani, having declared that Israel is "the most hideous occurrence in history" which the Muslim world "will vomit out from its midst" with "a single atomic bomb." So wiping Israel off the map would appear to be one of those rare points of bipartisan consensus, as unexceptional as coming out in favor of motherhood and apple pie.

And indeed President Ahmadinejad, speaking a couple of days later at a "Death to Israel" rally, couldn't see what all the fuss was about. Nor could his rival, Mr. Rafsanjani, who pointed out, "Even in Europe, the majority of the population is strongly critical of Israel, but they are



ATTA KENARE/AFP

The man who would nuke

afraid to express their views." Judging from the BBC's website, only the first half of that sentence is true. Here's what the Beeb's viewers and listeners had to say:

"Is this story true? The current American regime is expert at creating faked excuses for military and political action. The WMD scam in Iraq for example."

"I'm not sure it's any worse than what Bush said about Iraq, and at least Ahmedinejad is using only words, not bombs."

"According to BBC, this type of comment is commonly made by Iranian politicians. If so, we need to understand this in context."

"Iran's Prime minister said 'Israel should be wiped off the map'. How do we know that he wasn't referring to a peaceful arrangement for Israel to give land back to Palestine rather than a violent threat?"

How indeed? Well, maybe one way to find out is to look at the rest of the speech: "We are in the process of a historical war between the World of Arrogance [the West] and the Islamic world. . . . Is it possible for us to witness a world without America and Zionism? You had best know that this slogan and this goal is attainable, and surely can be achieved."

So, this isn't just the usual itsy-bitsy wipe-Israel-off-the-face-of-the-earth boilerplate that Nasser was doing 40 years ago. The Europeans may be indifferent to the incineration of the Zionists but they surely can't be as relaxed about meeting the same fate themselves. The president's chief strategist, Hassan Abbasi, has come up with a war plan based on the premise that "Britain is the mother of all evils"—the evils being America, Australia, New Zealand, Israel, the Gulf states, and even Canada, all of whom are the malign progeny of the British Empire. "We have a strategy drawn up for the destruction of Anglo-Saxon civilization," says Mr. Abbassi. "There are 29 sensitive sites in the U.S. and in the West. We have already spied on these sites and we know how we are going to attack them. . . . Once we have defeated the Anglo-Saxons, the rest will run for cover."

Iran isn't an impoverished joke-state basketcase like Sierra Leone. It's a major regional power. What should we do? Take them at their word? Or apply the Democrat-media-CIA test and wait till we've got absolute definitive 100 percent proof that they've got WMD—the absolute definitive 100 percent proof being a smoking crater where Tel Aviv used to be, or maybe London. The contrast between the Iranian president's speeches and the worthless piffle of a Beltway non-scandal is very telling—or would be if the parochial U.S. media had any interest in covering it.

How can even the dreariest press in the English-speaking world maintain their interest in the third year of Joe Wilson's 15 minutes? What a pitiful spectacle. If they've a sense of humor, the Iranians will time the mushroom cloud for the first day of the Bush-Cheney impeachment trial. **NR**

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Relaxation therapy for your feet

Visco-elastic foam has changed the way people sleep, now it helps the way you walk.

by Leigh Ligon

My feet hurt! How many times have you heard *or* said that...standing in line at the grocery store or simply while doing daily routine tasks? I feel like the older I get the more my feet ache. I've tried elevating my feet, soaking them in a hot water and expensive massage therapy—but to no avail. That's why I'm so excited to tell you about my recent discovery—CLOUD 10 Slippers!

How did a NASA invention save my feet? From the moment I slipped them on, they molded to the shape of my feet like I had a custom fit pair of slippers made especially for me! The slipper's insole is made from visco-elastic memory foam originally created by NASA. This foam equalizes pressure, reduces stress and tension and provides incredible comfort.

According to the American Podiatric Medical Association, as people age, their feet tend to spread, and lose the fatty pads that cushion the bottom of the feet. Additional weight can affect the bone and ligament structure. These slippers mold to the contours of my feet through my body's heat and weight, literally cushioning every single step I take.

Technologically advanced slippers mold to the contours of your feet making each step feel like you're walking on Cloud 10!

Did you know that the average person takes 8,000 to 10,000 steps a day, which adds up to about 115,000 miles over a lifetime? That's enough to go around the circumference of the earth four times. No wonder we all have tired, aching feet.

I've heard about similar kinds of slippers, but I couldn't afford to spend nearly $70 a pair. The Cloud 10 Slippers were a much better fit for my budget. The outer material of these stylish slippers is beautiful tan faux suede and they feature a cozy, fleece-lined interior and collar to provide added warmth. The durable rubber sole is perfect for my quick trips outdoors to grab the morning paper.

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